

Our Relations
to the Nations of
the Western Hemisphere

By CHARLES EVANS HUGHES

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OUR RELATIONS TO THE NATIONS OF
THE WESTERN HEMISPHERE

THE STAFFORD LITTLE LECTURES
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OUR RELATIONS
TO THE NATIONS OF THE
WESTERN HEMISPHERE

BY
CHARLES EVANS HUGHES



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OUR RELATIONS TO THE NATIONS OF THE WESTERN HEMISPHERE

I

IN these necessarily brief observations, I shall not attempt an historical review. One cannot fail to realize that the outstanding events of the past thirty years have given us new relations and new aspects of old relations. Let me remind you of some of the more significant of these events. The Spanish War brought the Republic of Cuba into the family of the American States. We were thus rid of conditions at our door which were intolerable and would have continued so long as Spain maintained her control and abused her privilege. The new relation has created a different set of problems. The cutting of the Isthmus of Panama by a canal, "the greatest liberty man has ever taken with nature," as Mr. Bryce put it, has created new conditions of strategy and defense. It has given its benefits to the world at large, and its special advantages to the American peoples, but it has brought peculiar responsibilities to the United States. Panama became an American Republic and

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we guaranteed her independence. In meeting a commercial and strategic exigency, we entered into a new political relation. Our treaties with countries in the Caribbean area, and treaties between these countries, in part have evidenced, and in part have produced, new situations with special obligations. Since the World War, the United States has had a position of extraordinary relative economic strength, with the responsibility of the possession of needed resources of credit. While the United States did not become a member of the League of Nations, nineteen American States, including Canada, became members. Several Latin American Republics have been members of the Council of the League. Representatives of Latin American Republics have presided at the meetings of the Assembly of the League. It is apparent that a special effort has been made on the part of the European powers to bring about close political relations with the Latin American States, and representative men of Latin America have been brought into more intimate contact with the leading figures of European diplomacy. Costa Rica has ceased to be a member of the League and Brazil in 1926 gave preliminary notice of withdrawal. It is also true that several Latin American States have not manifested deep interest in its proceedings, but the League of Nations is, and will remain, an important factor which must have friendly but adequate recognition

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in considering our relations with our neighbors. The establishment of the Permanent Court of International Justice at The Hague has provided a new forum for the hearing of international controversies. Fifteen American countries, including Canada, have signed the protocol establishing the Court, although most of these have not ratified it. Eight American countries have signed the optional clause providing for compulsory jurisdiction of the Court. Two distinguished jurists of Latin America are Judges of the Court. An eminent jurist of the United States has been one of its Judges. We have not adhered to the protocol as the reservations of our Senate have not been accepted. I should also mention as a non-political, but in my view, an extremely important and recent development, the progress in aviation. This is destined to create a new intimacy among the American States. To a considerable degree it will remove the barriers which have prevented familiar intercourse. A few days will suffice for communication between the American capitals where formerly weeks of tedious journeying was necessary. Lindbergh pointed the way in his prophetic flight. Whatever may be said of the obstacles to regular transatlantic air flights, we have at hand the instrumentality of inter-communication among the American Republics without serious natural difficulties. When we consider the cumulative effect of all these changes in

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conditions, political and non-political, we should be convinced that, instead of repeating shibboleths or harping on what is called "imperialism,"—a phrase which serves as a substitute for thought and suggests the moral indignation which is so often used to cover a multitude of delinquencies in argument,—it is necessary to seek a realistic conception of our relations to the American States and our duties and privileges in the New World of the second quarter of the twentieth century.

Our relations may broadly be described as economic, cultural and political, the relations between peoples and the relations between governments. Our economic relations give rise to certain questions to which I shall later refer in connection with the subject of foreign loans and investments. So far as trade is concerned, we have little reason for complaint or apprehension. For the most part in relation to Latin America, our economic activities are complementary and not competitive. The products of Latin American countries are typically those which either are not produced in the northern part of North America or are produced there only to a degree insufficient to fill the national needs. Conversely, the typical products of North America and particularly those of the United States, so far as they enter into foreign commerce, are those which to a large extent are not produced in Latin American countries or are not

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produced in quantities adequate to their demands. There has been also a rising purchasing power in many Latin American countries. This has been notably the case in Cuba which has developed a *per capita* import ratio exceeded by few countries in the world and equalled by no other Latin American country. In the years 1910 to 1914, exports from the United States to Latin America had already reached a value of over three hundred and two million dollars a year. The increasing demands of the Latin American countries have pushed the total far above that level. The total exports from the United States to Latin American countries in 1926 amounted to over eight hundred and seventy-two million dollars or over two and a half times the value of twenty-five years earlier. The growth of purchases by the United States in Latin America has been even more remarkable. In 1910 to 1914, these purchases had a value of four hundred and thirty-five million dollars. They had risen to one billion and ninety-four million dollars in 1926, an increase of over two hundred and fifty per cent and a gain in total of six hundred and fifty-nine million dollars. The year 1927, we are advised by the Department of Commerce, was one of deflation after an almost continuous seven-year period of increasing prosperity. From July, 1920, until June, 1927, the upward movement in the volume and value of trade continued with only minor

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recessions and the Department of Commerce assures us that the present downward tendencies should not be viewed with concern, the decrease being slightly more than two per cent in United States exports and six per cent in imports. The decline in exports is said to be more than accounted for by Mexico alone and, in view of the unsettled conditions in that country for several years, it cannot be taken as indicating a permanent trend in our export trade. The decrease in United States imports from Latin America in 1927 is wholly one of values as the volume of imports has remained firm. We are told that lower prices for coffee and petroleum alone would easily account for this slight reaction. We have become the principal suppliers of goods in Latin America. The experts advise us that it is not to be expected that the United States will continue to command the same proportion of Latin American trade as during the war and in the years immediately following; that with the revival of the industries of Europe some proportional recession is inevitable. It is pointed out that our trade is built on a far more solid foundation when it rests on wholesome competition. Its security is based "on the growing prosperity of our Latin American customers, with their increased needs and newly awakened desires for goods which heretofore were either unknown or inaccessible to them, such as the automobile, the tractor, the radio, and the moving pic-

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ture.”¹ There are certain special situations which present difficult questions, but these are exceptional.

With Canada, also, our trade has greatly increased. Exports from the United States have risen from three hundred and fifteen million dollars in the years 1910-1914 to eight hundred and thirty-five million dollars in 1927, and our imports from Canada have increased from one hundred and seventeen million dollars in 1910-1914 to four hundred and seventy-five million dollars in 1927. For four months of 1927, Canada occupied first place among our export markets.²

In our cultural relations with our neighbors to the South we meet the barrier of language. No one should underestimate this obstacle. We are not inclined, as are the Europeans, to the mastery of alien tongues. We have not felt the need of it, and it must be admitted that the assiduity with which English is being studied abroad tends to make the acquisition among us of the languages of the continent of Europe an accomplishment rather than a necessity. This may account for our indisposition to be zealous in the study of Spanish and Portuguese to aid us in our contacts with Mexico, Central and South America, where English is not so generally studied as it is in Europe. But I believe that there is a constant increase

¹ Commerce Reports, January 30, 1928, p. 259.

² *ibid.*, February 13, 1928, p. 395.

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in the number studying Spanish in the United States and of those in the other Americas who are studying English. We have, as the resolutions of our Pan-American conferences illustrate, constantly increasing efforts in intellectual cooperation. What has stood in the way of cultural relations in the past has been chiefly the difficulties in communication between peoples, difficulties which have been greatly reduced by the improved facilities of transportation in recent years. The differences between us in temperament and manners are obvious enough. But such distinctions have long kept Latins, Teutons, Slavs and Anglo-Saxons apart, despite geographical propinquity, and even Anglo-Saxons do not always mix well. I think that the truth is that most of the people in every country do not travel and have slight personal contacts with the peoples of other countries. Those engaged in international trade meet each other and, while their experiences leave both pleasant and unpleasant memories, there is a constantly increasing number of the well-informed and a greater degree of intelligent appreciation. We have also the recently expanded activities of press associations resulting in a more extensive interchange of "news" with Latin America, thus affording an invaluable vehicle for the dissemination of important current information as well as the knowledge of the daily happenings which appeal to a non-discriminating and sensation-

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loving public forming its opinion of our national life from the stories of crimes and misdeeds. The moving picture is now, perhaps, the most important point of "cultural contact" for the vast majority of people who believe not only all they hear but all they see. Then there are the elect few, the students of literature and art, those familiar with the culture of other peoples, who seek and admire the best everywhere, whose patriotism is not the less real because it does not determine their taste or obscure their vision, who are neighbors to all of like spirit throughout the world. These are the leaven of international understanding, but the lumps do not readily yield to their influence. We should also not fail to take account of the contribution that we have been able to make in relation to public health, the contribution most gratefully recognized by our friends to the South. Havana is now one of the cleanest and healthiest cities in the world, with a remarkably low death rate. The work of the Rockefeller Foundation in Latin America has been of extraordinary importance in promoting friendship as well as health.

It is my purpose to deal especially with political relations and in this sphere it should be manifest at once that differentiation is essential. There is Canada, to begin with, to which our relations are quite distinct from those which we have with other American States. It is a common error to talk of Latin America

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as a unit. The distinctions, however, between different parts of Latin America are readily observed. In South America there are ten of the twenty Latin America Republics, Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela. These countries have about seventy-four millions out of the approximately one hundred millions of the entire population of Latin America, and about seven million square miles out of about eight million square miles of the total area of the Latin American Republics. We note at the outset that there is nothing in our political relations with this vast region of Latin America which should cause any disturbance of normal and friendly intercourse. Our difficulty with Colombia growing out of the events in Panama in 1903 has been settled. We have never intervened in Venezuela, although we have had occasion to stand in the way of what we thought at the time would be action by others against Venezuela, contrary both to her interests and our own. Questions of tariff and trade regulations have arisen with Argentina, but they do not differ in their essential character from those which we have had in the same period with European countries, as, for example, with France, The Netherlands and Spain. In speaking of our relations to Latin American countries, we should realize that the several interests of the South American countries are not identical with

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those of the other American States, that is, Mexico, the Central American Republics, Panama, Cuba, the Dominican Republic, and Haiti. And each of the last-named Republics has its distinct interests. Despite all that is the subject of criticism, proposals and discussions, I think that it is fair to say that our relations with these countries are better than they have been for many years. We shall make progress if we recognize that instead of a Latin American problem, there are a series of distinct problems and each must be considered on its merits without the confusion resulting from an attempt to spread a particular difficulty over areas in which it is unknown.

MONROE DOCTRINE

THERE is indeed a policy of the United States which applies generally to this hemisphere. That policy is called the Monroe Doctrine. It has served as the occasion for many unwarranted and confusing utterances and in consequence has been the object of much undeserved attack. To some it is a pillar of cloud, even by day, and to others a pillar of fire, not as a friendly safeguard but as a portent of unwelcome interferences, more terrible in the darkness of misunderstanding. The people of the United States had profoundly sympathized with the struggle of our neighbors for independence. We took the lead in acknowledging their independence. The Holy Al-

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liance formed by the sovereigns of Austria, Russia and Prussia sought "to put an end to the system of representative government" and proposed to devote itself to the overthrow of the new governments erected out of the old colonies of Spain in the Western Hemisphere. In this situation it was deemed advisable by the United States to make a declaration of policy and this was formulated in President Monroe's message of December 2, 1823. The two paragraphs of the message which contained the Monroe Doctrine were distinct. One related to the former colonies of Spain; the other grew out of the question of Russian claims on the northwest coast of North America. The Russian Empire had issued a ukase in 1821, prohibiting citizens of other nations from navigating and fishing within one hundred Italian miles of the northwest coast of North America from Bering Strait to the fifty-first parallel of north latitude. The Secretary of State, John Quincy Adams, informed the Russian Minister that the United States "should contest the right of Russia to any territorial establishment on this continent and that we should assume distinctly the principle that the American continents are no longer subjects for any new European colonial establishments." This was the genesis of the second part of the Monroe Doctrine. There were thus in the original declaration two points stating the objection of this Government—first, to any

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action by European powers "to extend their system to any portion of this hemisphere,"—to any interposition by them for the purpose of oppressing the new American States or in any manner controlling their destiny; and second, to the future colonization by European powers of the American continents. I may repeat my statement made at the time of the celebration of the Centenary of the Doctrine³ that in all that has been said or done since the declaration of Monroe it must be regarded as modified in only two particulars. What was said with Europe exclusively in view must be deemed equally applicable to all non-American powers; and the opposition to the extension of colonization was not dependent upon the particular method of securing territorial control and, at least since the time of President Polk, may be deemed to embrace opposition to acquisition of additional territory through transfer of dominion or sovereignty. Neither of these modifications changes the Doctrine in its essentials and it may be summarized as being opposed (1) to any non-American action encroaching upon the political independence of American States under any guise, and (2) to the acquisition in any manner of the control of additional territory in this hemisphere by any non-American power.

³ Address before the American Academy of Political and Social Science at Philadelphia, November 30, 1923; "Pathway of Peace," p. 146.

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This policy of the United States is essentially defensive. It was, and has continued to be, deemed to be necessary to our security. It is not a policy of aggression and it does not impinge upon the independence and sovereignty of other American States. It does not seek to establish a protectorate over other American States. Our determination to oppose foreign interference leaves them the more secure in the development of their own institutions and in the enjoyment of their proper independence. It is a policy that gives no "excuse for aggrandizement on our part at the expense of the Republics to the South of us." It has been stated authoritatively that "this doctrine has nothing to do with the commercial relations of any American power, save that it in truth allows each of them to form such as it desires," and that "we do not guarantee any State against punishment if it misconducts itself, provided that punishment does not take the form of acquisition of territory by any non-American power."⁴

It is said by critics of this policy that it is an anachronism. What is meant by this? Either that its application is no longer needed, or that, if there should be an appropriate occasion for its application, it should not be applied. If it be thought that there never will be occasion for the application of

⁴ President Roosevelt's Annual Message, 1901; Moore's International Law Digest, Vol. VI, Sec. 968.

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the doctrine, as I have sought to define it, the question need not be discussed. It is one of prophecy. It may indeed gratefully be recognized that many of the American Republics have grown strong and are able to resist aggression, and that at present non-American powers do not appear to cherish any purpose to antagonize either the assertion or the maintenance of the principle of the inviolability of the American Republic and their territory. Non-American powers have assumed the obligations of the covenant of the League of Nations. But the "future" is a long time. No harm is done in maintaining the principle, if it is a sound one, although happily its validity may not be contested. If we sought to abandon it, we might have as much trouble in showing what it was we had abandoned as we have in dealing with the Doctrine itself. The formal abandonment might be an invitation to new controversies or might prompt or excuse action which otherwise would not have been contemplated. The real question, in considering the maintenance of the policy, is whether we should defend it if there should be occasion for its application. I do not think that there is any doubt of the prevailing opinion in this country upon that point. I believe that the American people are as firmly opposed as ever to any attempt to encroach upon the political independence of the American States or to the acquisition by a non-American power

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of the control of additional territory in this hemisphere. It should also be observed that while some of the American Republics are strong, others are relatively weak. This relative weakness notably exists in the Caribbean area where our interest is strongest both by reason of propinquity and the importance of the security of the Panama Canal. Our interest in the immunity from aggression, in the stability, the good order, and the peace of the countries in this region would make it advisable for us to announce a similar doctrine, if we did not already have the Monroe Doctrine. We shall rejoice as our immediate neighbors grow in strength and have the added security due to improvements in communication and to their political and economic progress. But the Monroe Doctrine stands, threatening none, as a safeguard with which no responsible American statesman would be rash enough to attempt to dispense. If this be true, instead of deriding it, it is important to have the Doctrine understood, and not to extend it beyond its proper limits. And when we seek to apply it, the grounds of its application should be made clear.

Another criticism is that we have reserved to ourselves the definition and application of the Monroe Doctrine. But viewing the Doctrine as an expression of the policy of the United States in its own defense, it is difficult to find ground for the objection to our formulation of it. The essence of self-defense is that

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it is *self*-defense. When President Wilson said that the Monroe Doctrine "has always been maintained and always will be maintained upon her own responsibility," referring to the United States, it was evident he meant that the United States deemed it essential to her security to resist such measures on the part of non-American powers as those which the Doctrine describes. If a nation is not to decide what it will do in its own defense, it must be because it has yielded that right to the decision of others, and if it does so yield it, it must have confidence that its security will be aided and not impaired.

The difficulty has been not in our defining the Doctrine, but in our failing at times to define it, in the indulgence in indefinite pronouncements, in making it a cover for extravagant utterances and pretensions which are foreign to the purposes of our Government, the demands of our security, and the sentiment of our people. Such statements, implying unwarranted authority of visitation and superintendence, hostile to the proper recognition of the sovereignty of our sister Republics, are in striking contrast with the carefully measured declaration of Monroe. We should seize every opportunity to disclaim them, to show that our ambition is to be co-workers with our sister Republics, and not masters, that our purpose is to resist aggression, not to commit it. In the words of President Roosevelt, referring to

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the Doctrine: "It is in no wise intended as hostile to any nation in the Old World. Still less is it intended to give cover to any aggression by one New World power at the expense of any other."⁵

It should be remembered that there is not the slightest objection to any other American Republic having a similar doctrine of its own, or making the Monroe Doctrine its own. It can promote its own security by a similar policy. We should not regard it as in any way impinging upon our independence if Brazil or Argentina, Chile or Peru, Mexico, Colombia, Venezuela, or any other American State, should announce that it would resist any attempt of any non-American power to encroach upon the political independence of American States under any guise or to acquire control of additional territory in this hemisphere. Nor should we have ground for objection if any of these States said that it reserved the right to oppose such measures when and as it saw fit. We should welcome the establishment by all the American Republics of this principle.

Confusion has been caused by what appears to be a prevalent notion that the Monroe Doctrine is the justification or excuse for every action that we take in relation to Latin America. We have other policies; they should be explained, criticized or defended upon

⁵ Annual Message, 1901; Moore's International Law Digest, Sec. 968.

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their merits; they should neither gain nor lose by confounding them with the Monroe Doctrine. For example, we have a definite policy of protecting the Panama Canal. We deem it to be essential to our national safety to hold the control of the Canal and we could not yield to any foreign power the maintaining of any position which would interfere with our right adequately to protect the Canal or would menace its approaches or the freedom of our communications. This applies just as well to American powers as to non-American powers. We have the right to protect American lives and property when endangered in circumstances and areas where governments have ceased properly to function, and this principle is applied although there may be no prospect of non-American interference and no occasion for applying the Monroe Doctrine. We recognize that other States have a similar right. It is true that our interposition in such cases may have the actual and intended effect of avoiding the interposition of non-American powers and the consequent activities and developments at which the Monroe Doctrine was aimed, but our own right to protect our nationals is quite distinct from the Monroe Doctrine.

The policy embodied in the Doctrine is an aid to peace. We have an added reason to promote good order and the peaceful settlement of controversies. And it should be remembered that the United States

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has used its influence to effect such settlements between the American States and non-American powers. The historic instances of the settlements with respect to Belize, the Bay Islands and the Mosquito Coast, the promotion of the arbitral determination of the boundary line between Venezuela and British Guiana, which ended a controversy which had existed for the greater part of the nineteenth century, and the disposition of the claims of Germany, Great Britain and Italy against Venezuela, afford familiar illustrations.

Apart from this general policy, we have particular situations, as I have said, calling for differentiation in understanding our relations with the nations of this hemisphere.

CANADA

SHE is no longer a mere subsidiary corporation in a British holding company. She is a Nation, a member of the Commonwealth of Nations constituting the British Empire. There has been a "transition from a colony governed from Downing Street to a sister nation of Great Britain."⁶ Having gained at the Peace Conference the position of "powers with special interests," the Dominions took the ground that

⁶ Newton W. Rowell, K.C., "The British Empire and World Peace," p. 172.

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they should be similarly accepted in the future international relationships contemplated by the League of Nations. They were signatories of the Treaty of Peace and they became members of the League. Their position under the Covenant with respect to membership and representation in the Assembly of the League is the same as that of other members. We are advised that the Prime Minister of Canada obtained from President Wilson, Clemenceau and Lloyd George a signed declaration, with special reference to Article 4, "that upon the true construction of the first and second paragraphs of that Article representatives of the self-governing Dominions of the British Empire may be selected or named as members of the Council."⁷ Canada has recently been made a member of the Council. As a member of the League in full standing, Canada is entitled to vote as its interests may demand and independently of Great Britain. Canada has thus secured a recognized status in the family of nations. What this may portend, what variance, if any, there may be between the policy of the Dominion Government and that of the British Government, it is impossible definitely to forecast. As Sir Robert Borden has said: "The principle of equal nationhood and complete autonomy has been established. It remains to determine the system and method by which that principle shall receive vitality

⁷ Sir Robert Borden, "Canadian Constitutional Studies," p. 120.

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and force in the practical administration of the Empire's affairs."⁸

Canada sends her Minister to the United States. Several years ago there was an agreement between the British and Canadian Governments for the appointment of a Canadian Minister at Washington, the understanding being set forth in a declaration made simultaneously in the British House of Commons and the Canadian Parliament in 1920. The Honorable Newton W. Rowell, K.C., has set forth the reasons for this action. He has referred to the common international boundary of 5,400 miles between the United States (including Alaska) and Canada. "For hundreds of miles this country runs through inland waters, and questions relating to boundary waters, fishery rights and other matters of a like character are continually arising." In the matter of trade, he observed: "We do a larger trade with the United States than with any other country in the world, and the United States does a larger trade with us than with any other country save Great Britain. Good trade relations between Canada and the United States are of the utmost importance to both countries." Many of the most important and significant political events of the next half century will be enacted on the Pacific. "Who are the powers," he asked, "on the Pacific?" "Canada is more vitally

⁸ "Canadian Constitutional Studies," p. 121.

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interested in the problems of the North Pacific than any other portion of the British Empire. She is more vitally interested in the problems of the North Pacific than is either Australia or New Zealand. They are more deeply interested in the problems of the South Pacific. Canada and the United States lie on one side of the North Pacific; Russia, China and Japan on the other; and in all the problems that arise affecting the Pacific the people on this Continent may find that they have common interests. It may be that we shall find that men sprung from the same race, speaking the same language, possessing the same ideals, are largely interested in the same questions, but whether we are or not, it will be of the greatest importance to Canada to know what are the ideals, the views, and the policies of the United States on the problems of the Pacific.”⁹ That nations in such constant intercourse on such a large scale should be able to deal with each other only through London was regarded as an impossible situation. They must be in direct communication, ever ready to explain to each other their respective points of view.

Even before the appointment of a Minister to Washington, treaties with the United States were negotiated directly with Canadian representatives and signed, not by the British Ambassador, but by the representative of the Dominion Government sent

⁹ “The British Empire and World Peace,” pp. 186, 187.

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to Washington for that purpose. I recall in one instance the introduction by the British Ambassador to the Secretary of State of the United States of the Canadian representative. The Ambassador withdrew immediately after the introduction, whereupon the treaty was signed. Treaties with Canada are made in the name of the King as a symbol of the special relationship between the different parts of the Empire.

At the opening of the Imperial Conference of 1926, the British Prime Minister alluded to Sir Edward Grey's reference at the Imperial Conference of 1911, to "the foreign policy of this country." Mr. Baldwin observed: "The change that has taken place since then is aptly illustrated by the fact that it is now by universal admission no longer only a question of 'the foreign policy of this country.' The problem before us is how to reconcile the principle of self-government in external as well as domestic affairs with the necessity of a policy in foreign affairs of general imperial concern which will commend itself to a number of different Governments and Parliaments." The report of the Earl of Balfour as Chairman of the Imperial Relations Committee of the Conference referred to the principles established in 1923 and added: "We went on to examine the possibility of applying the principles underlying the treaty resolution of the 1923 Conference to matters arising in the conduct of foreign affairs generally. It

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was frankly recognized that in this sphere, as in the sphere of defense, the major share of responsibility rests now and must for sometime continue to rest with His Majesty's Government in Great Britain. Nevertheless, practically all the Dominions are engaged to some extent in the conduct of foreign relations, particularly those with foreign countries on their borders. A particular instance of this is the growing work in connection with the relations between Canada and the United States of America which has led to the necessity for the appointment of a Minister Plenipotentiary to represent the Canadian Government in Washington. We felt that governing the consideration underlying all discussions of this problem must be that neither Great Britain nor the Dominions could be committed to the acceptance of active obligations, except with a definite assent of their own Governments. It was agreed in 1923 that any of the Governments of the Empire contemplating the negotiation of a treaty should give due consideration to its possible effect upon other Governments, and should take steps to inform the Governments likely to be interested of its intention."

There is apparent basis for the prophecy that Canada will insist in its relation to distinctively American policies on determining her own action and negotiating her own agreements.

The history of our relations with Canada, so large

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a part of which discloses animosities, recriminations and sharp disputes, is a record of a remarkable series of peaceful adjustments. We have had serious questions as to the international boundary. The endeavor to obtain a pacific settlement was begun by John Jay as early as 1785, although his report submitted by President Washington to the Senate in 1790, recommending a joint commission, did not lead to an agreement. The Jay Treaty of 1794 provided for an arbitration which was successfully conducted as to a part of the boundary defined by the river St. Croix. The Treaty of Ghent of 1814 and the Webster-Ashburton Treaty of 1842 provided for further adjustments. The boundary west of the Rocky Mountains and extending to the Pacific Coast was fixed by the Buchanan-Pakenham Treaty of 1846. The Treaty of Washington of 1871 made possible the settlement of what has been called "the most formidable list of difficult and dangerous questions ever dealt with by one Convention." These embraced not only the Alabama claims, but questions relating to the Atlantic fisheries, the navigation of the St. Lawrence, the Yukon, Porcupine and Stikine Rivers, and passage through Canadian canals, the lumber trade down the river St. John, and certain boundary questions. The Bering Sea arbitration of 1893 in disposing of a controversy with Great Britain affected favorably our relations with the Dominion of Canada. Later,

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the Convention of 1903 led to an adjudication before a joint tribunal of the Alaskan dispute. In 1908, a Convention was concluded for a more satisfactory definition by experts of the Canadian International Boundary. A further boundary treaty was made in 1910. There was also the important North Atlantic Coast Fisheries Arbitration by the Hague Tribunal under a special agreement of 1909 which disposed of a very serious controversy.

While we have thus been fortunate in the settlement of differences with our great neighbor on the North, I believe that the best augury for the future is found in the successful working of the machinery of adjustment that has been set up in the International Joint Commission established by the Treaty of 1909. A joint commission affords a method of adjustment having certain features distinct from that of arbitration as the States concerned in the creation of the commission have each an equal representation. It is thus possible to provide for the investigation of subjects in relation to domestic questions which have an international bearing where the States would not be willing to submit to arbitration. The joint commission is to inform and not to decide, to find the facts and to report to the governments of the States concerned the results of their inquiries, the effect of action taken or proposed, the character or extent of

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actual or possible injuries. The International Joint Commission, of the United States and Canada, has jurisdiction to pass upon all cases involving the use or obstruction or diversion of waters with respect to which the approval of the Commission is required; that is to say, boundary waters as defined in the treaty, waters flowing from boundary waters and waters flowing across the boundary. Subject to existing rights, the treaty lays down certain principles as to the uses of boundary waters. Fifteen cases have been disposed of by the Commission under its power to pass upon applications for the uses of waters. Apparently, there has been no dissatisfaction with the orders of the Commission. While the Commission has no power to enforce its orders, they have been obeyed. Although there may be, in view of equal representation, a division of opinion, all cases but one have been decided unanimously. Special boards of control have been set up in certain cases subject to the authority of the Commission. This has been done pursuant to the Commission's orders after agreement between the governments. The International Joint Commission has also performed important administrative duties.¹⁰ But the authority that holds perhaps the

¹⁰ See "The International Joint Commission," by Prof. Robert A. MacKay, *American Journal of International Law*, April, 1928, pp. 292 *et seq.*; also "The International Joint Commission, Organization, Jurisdiction and Operation," Washington, Government Printing Office, 1924.

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greatest promise is that of investigation and recommendation. The treaty provides (Article IX):

The High Contracting Parties further agree that any other questions or matters of difference arising between them involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the International Joint Commission for examination and report, whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters be so referred.

It is thus apparent that an investigation may be requested by either government or by both governments jointly. The Joint Commission is authorized in each case "to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference." These reports are not to be regarded as decisions of the questions so submitted either on the facts or the law and are not to have the character of an arbitral award. The Commission is to make a joint report to both governments. If there is disagreement, there may be a minority report. If the Commission is evenly divided, separate reports are to be made by the Commissioners on each side to their own government.

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Thus far all questions referred to the Commission for investigation have been referred jointly by the two governments. The six Commissioners have in each case been in substantial accord in their conclusions and recommendations. There have been four investigations of importance, the last of which is that in relation to the St. Lawrence Waterway. The Commission recommended that a joint board of engineers should be set up by the two governments to deal with the important technical questions presented. This joint engineering board was established and submitted an elaborate report to the Commission.

Another provision of the Treaty of 1909 (Article X) provides that "any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties." The reference on the part of the United States is to be with the advice and consent of the Senate and on the part of the Dominion Government with the consent of the Governor General in Council. In each case the Commission is authorized to report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appro-

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priate, subject to the restrictions or exceptions in the terms of reference. A majority may make a finding, and, if the Commission cannot reach an agreement, provision is made for the appointment of an umpire who is to render a final decision; in short, this contemplates an arbitral settlement to the extent that questions are submitted. Whatever may prove to be the value of the last mentioned provision, under which as yet there have been no references to the Commission, there can be no doubt of the advantage of having machinery in readiness for prompt and competent investigation. Without a final commitment, it affords an opportunity for investigation of delicate questions lying within the domestic sphere and yet having an international bearing. An impartial examination of the facts by a permanent joint commission would frequently enlighten the legislatures of both countries and lead to the formation of a sound public opinion permitting an amicable adjustment. We have used too rarely this sort of instrumentality in relation to international controversies. We are constantly talking of arbitration and frequently appealing to the general desire for pacific solutions yet forget the practical difficulties in establishing a satisfactory arbitral tribunal where the umpire, the third or fifth arbitrator, as the case may be, has usually in practice the absolute decision. Governments are reluctant to place their important inter-

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ests at the risk of a choice of the ultimate judge, who, in the absence of agreement, may be selected in a manner which gives no certainty of appropriate selection. Where each country has an equal number of representatives on a joint commission of investigation, and there is full opportunity for examination and report, there is oftentimes a better outlook for a reasonable adjustment than through an endeavor to make an absolute submission to arbitration. The unanimity of most of the decisions of the International Joint Commission representing the United States and Canada points to the ease with which many difficulties yield to the mere process of investigation.

Our relations to Canada are most satisfactory. Happily, the boggy of annexation no longer disturbs the imagination of our Canadian friends. The United States has no disposition to seek to annex Canada and Canada has no fear of any attempt at annexation. We rejoice in each other's prosperity. Canadians leave Canada to settle in the United States and many of our people have left the United States to settle in Canada. Our citizens make enormous investments in Canadian enterprises with no fear of unreasonable treatment and with abundant confidence in the future of the Dominion. The total foreign investments in Canada, in 1913, are stated to have amounted to about two billion five hundred million

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dollars. In 1927, they amounted to over five billion two hundred million dollars. In 1913, the portion of the investments in Canada coming from the United States was less than five hundred million dollars and in 1927 was nearly three billion dollars. It appears, however, that in recent years there have been large re-purchases by Canadians of Canadian securities amounting to what has been called a repatriation of Canadian enterprises. Canadians have been largely increasing their investments in foreign countries. It is estimated that in 1927 their investments in the United States amounted to nearly seven hundred million dollars.¹¹

There are, and probably always will be, between the United States and Canada differences in interest, and questions more or less serious have arisen and probably will arise, chiefly of an economic character. While here and there points of irreconcilable differences will appear, the interplay of interests in the main will lead to adjustments that are reasonably satisfactory. Peace between the two countries is assured. Alexander Hamilton, whom it is pleasant to regard as the apostle both of national strength and of international peace, recommended to President Washington in 1794 the limitation of armament on the Great Lakes and that policy under the Rush-Bagot arrangement of 1817 has been maintained.

¹¹ The Financial Post Year Book, pp. 237, 238.

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Our frontier of several thousand miles is without fortifications and, in its evidence of the friendly spirit that animates both peoples, is at once a memorial and a guaranty of peace. Canada's new status in the family of nations is a manifest aid to our friendly and mutually helpful intercourse. It is safe to say that the politics of Europe will not be permitted to interfere with Canadian interests in relation to the United States. There is no reason to doubt the loyalty of the Dominion to the British Empire and to the Crown that symbolizes the Empire. Canada unquestionably will look with sympathetic interest upon the relations of Great Britain to the nations of Europe and will feel a certain responsibility as a member of the British Empire, but Canada may be trusted to see that Canadian interests are not injured and that British policy is not moulded in disregard of them. The statesmen of Canada will have an intimate knowledge of American affairs of which British statesmen however intelligent cannot boast and Canadian elections will determine the policy of the Dominion as a self-governing State. Thus the new situation gives promise of even more satisfactory relations between the United States and Canada than ever before and I can see nothing in Canada's relation to the League of Nations which should cause misgiving. The relation of Canada to the League

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gives an opportunity for the presentation and protection of Canada's interests, but those interests will still be dominant. It is those interests and our interests which will promote the most friendly relations between Canada and the United States.

II

LATIN AMERICA

AT the outset, I emphasized the fact that in Latin America we deal with twenty States each with its distinct character and policy. We have different questions not only as to particular countries, but as to different areas. It is in the Caribbean region that our more troublesome questions arise. But as it would be impossible in this short examination to take up the various countries *seriatim*, I shall bring what I have to say under the headings of various classes of problems to which we find it necessary to address ourselves; that is, (1) of recognition of governments; (2) of furnishing arms; (3) of loans and investments; (4) of intervention, and of the protection of lives and property of our nationals; (5) of pacific settlement of controversies; and (6) of international organization.

RECOGNITION OF GOVERNMENTS

THIS derives importance from the frequency of revolutions. Our general policy is fairly well defined. This is not to suggest the absence of inconsistencies

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and it is true that early statements have been elaborated and that different situations have led to emphasis on different points.

We are not concerned with the question of the legitimacy of a government as judged by former European standards. We recognize the right of revolution and we do not attempt to determine the internal concerns of other States. The words of Thomas Jefferson in 1793 expressed a fundamental principle: "We surely cannot deny to any nation that right whereon our own Government is founded,—that every one may govern itself according to whatever form it pleases, and change these forms at its own will; and that it may transact its business with foreign nations through whatever organ it thinks proper, whether King, Convention, Assembly, Committee, President or anything else it may choose. The will of the nation is the only thing essential to be regarded."¹ The extent to which we have gone in applying this principle was shown by the statement of Mr. Buchanan as Secretary of State: "In its intercourse with foreign nations the Government of the United States has, from its origin, always recognized *de facto* governments. We recognize the right of all nations to create and reform their political institutions according to their own will and pleasure. We do not go behind

¹ Instruction to Gouverneur Morris, March 12, 1793. Moore's International Law Digest, Vol. I, p. 120.

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the existing government to involve ourself in the question of legitimacy. It is sufficient for us to know that a government exists capable of maintaining itself; and then its recognition on our part inevitably follows. This principle of action, resulting from our sacred regard for the independence of nations, has occasioned some strange anomalies in our history. The Pope, the Emperor of Russia, and President Jackson were the only authorities on earth who ever recognized Don Miguel as King of Portugal.”² While the will of the nation is to be regarded, our Government announced by Secretary Seward that a revolutionary government establishing itself by force in violation of constitutional principles should not be recognized until it appeared that the change had been accepted by the people. “What we do require,” said Mr. Seward, “and all that we do require, is when a change of administration has been made, not by peaceful constitutional processes, but by force, that then the new administration shall be sanctioned by the formal acquiescence and acceptance of the people.”³ But it has also been declared that while our Government has laid stress upon the value of expressed popular approval in determining whether a new government should be recognized, it has never

² Moore's International Law Digest, Vol. I, p. 124.

³ Diplomatic Correspondence, 1868, II, 863; Hyde, International Law, Vol. I, p. 69, note.

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insisted that the will of the people may not be manifested by long continued acquiescence in a régime actually functioning as a government. When there is a question as to the will of the nation, it has generally been regarded as a wise precaution to give sufficient time to enable a new régime to prove its stability and the apparent acquiescence of the people in the exercise of the authority it has assumed.

The ability to fulfil international obligations is a point of importance. In 1899, Secretary Hay regarded it as sufficient that the new government should "be established in control of the machinery of administration and in a position to fulfil its international obligations."⁴ Mr. Hill, as Acting Secretary of State, made a rather full statement on the subject in 1900:

"The policy of the United States announced and practised upon occasion for more than a century, has been and is to refrain from acting upon conflicting claims to the *de jure* control of the executive power of a foreign State; but to base the recognition of a foreign government solely on its *de facto* ability to hold the reins of administrative power. When, by reason of revolution or other internal change not wrought by regular constitutional methods, a conflict of authority exists in another country whereby the titular government to which our representatives are

⁴ Moore's International Law Digest, Vol. I, p. 155.

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accredited is reduced from power and authority, the rule of the United States is to defer recognition to another executive in its place until it shall appear that it is in possession of the machinery of the State, administering government with the assent of the people thereof and without substantial resistance of its authority, and that it is in a position to fulfil all the international obligations and responsibilities incumbent upon a foreign State under treaties and international law.”⁵

Ability to perform international obligations draws to it a favorable presumption, but it is not enough if that ability is coupled with a repudiation of international obligations. When a régime deliberately announces its defiance of international obligations, the recognition of which is appropriate to the position of the State in the society of nations, our Government has stated that it will withhold recognition. Thus it was said in explaining the position of our Government with respect to the Soviet régime in Russia: “Recognition is an invitation to intercourse. It is accompanied on the part of the new government by the clearly implied or express promise to fulfil the obligations of intercourse. These obligations include, among other things, the protection of the persons and property of the citizens of one country lawfully pursuing their business in the territory of the other

⁵ *ibid.*, p. 139.

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and abstention from hostile propaganda by one country in the territory of the other.”⁶ Recognition by our Government of the Soviet régime in Russia was refused on the ground that the international obligations of the Russian State had been repudiated, that American property held in Russia under valid titles had been confiscated without prospect of indemnification, and that those in control of the régime at Moscow were intent upon doing all within their power by insidious propaganda and the promotion of strife to destroy or embarrass existing governments throughout the world.

The situation in Mexico growing out of the revolution of 1913 and the assassination of Madero gave rise to serious difficulties. I shall not undertake to review the unfortunate events of that period. We refused to recognize the government of Huerta but later we did recognize that of Carranza. Assurances with respect to the discharge of international obligations were not fulfilled to the satisfaction of our Government. Consequently, recognition of Obregon was withheld. After a lengthy correspondence with respect to American rights, American and Mexican commissioners met in May, 1923, in Mexico City and were able to reach a mutual understanding. A Special Claims Convention for the settlement of

⁶ Letter to Samuel Gompers, President of the American Federation of Labor, from Secretary Hughes, July 19, 1923.

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claims of American citizens arising from revolutionary acts in Mexico from November 20, 1910, to May 31, 1920, and a General Claims Convention providing for the settlement of other claims by the citizens of each country against the other were then negotiated, and these conventions were ratified. The questions growing out of the provisions of the Mexican Constitution of 1917 relating to subsoil rights and agrarian lands were discussed, and the American commissioners submitted a report of the understanding reached with the Mexican commissioners. This report was approved by the President of the United States and the President of Mexico. Thus, Obregon was recognized and diplomatic relations between the two countries were resumed in September, 1923. It should be observed that in this discussion there was no attempt by our Government to defend claims which did not rest on valid titles honestly acquired under Mexican constitutional laws prior to the new Constitution. The adjustment of 1923 contained, it was believed, substantial assurances which were reasonably adequate. But the controversy continued as the rights thus believed to be recognized were not afforded appropriate protection. It is most gratifying to observe that recently an adjustment has been reached pursuant to the decision of the Supreme Court of Mexico rendered in November last. Ambassador Morrow who has conducted

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these negotiations recently made the following announcement after reviewing the history of the dispute:

"These regulations, when taken with the Supreme Court decision handed down November 17, 1927, the legislation passed by the Mexican Congress on December 26, 1927, and promulgated on January 10, 1928, and the letter of Minister Morones issued on January 9, 1928, evidence the determination by the judicial, the executive and legislative and the administrative departments of the Mexican Government to recognize all rights held by foreigners in oil properties prior to the adoption of the 1917 Constitution. The Supreme Court decision declared that the cutting down of the oil companies' rights to a fifty-year period was unconstitutional. In connection with that decision, the court said that the confirmation of a right is the express recognition of the same and to limit it is to modify that right instead of confirming it. Following this decision, the President asked Congress to modify the law of 1925 to conform with the Constitution as interpreted by the court. . . . After the legislation had been passed certain oil companies still had doubt as to whether those who took confirmatory concessions under the new law would get a new grant or have their old rights confirmed. Minister Morones wrote a letter, in answer to an inquiry from an oil company, stating that such confirmatory con-

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cession would operate 'as the recognition of rights which will continue in force subject only to police regulations.' President Calles, on the advice of Minister Morones, has now issued new regulations, modifying the old regulations in accordance with the decision of the Supreme Court and the new act of Congress. These new regulations make clear what Minister Morones had already made clear in his letter, that those who take confirmatory concessions under the amended law get a confirmation of their old rights rather than a new grant of rights. The form of confirmatory concessions, as set out in the new regulations, expressly declares that it is to 'operate as a recognition of acquired rights which continue in force.' "

There are other questions pending with the Mexican Government, but there has been a most welcome improvement in our relations. With mutual good faith and a sincere effort to understand each other, we should enter on a new era of friendship and co-operation. There is not the slightest reason why there should be antagonism between the peoples or the Governments of the United States and Mexico. Mexico is a land of great resources which need development. Citizens of the United States who are not adventurers, and are not seeking opportunities of exploitation to the disadvantage of Mexico, have capital to invest. But confidence is essential to sound

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economic relations. It should be understood that there is no desire on the part of our Government to interfere with the domestic policies of Mexico and that her independence and sovereignty will invariably be respected. Her interest in the protection of valid rights honestly acquired under her laws is no less than our own. Our interest in her friendship is no less than her interest in ours.

SPECIAL QUESTIONS RELATING TO THE RECOGNITION OF GOVERNMENTS ARISING UNDER THE CENTRAL AMERICAN TREATIES

IN Latin America revolutions frequently take the place of elections. The formal processes of constitutional government are so susceptible of abuse by those holding power that revolution has frequently appeared to be the only remedy. It will be the only remedy if there is no sincere effort to promote the development of constitutional government. The situation was so grave in Central America that the five Republics, Guatemala, Nicaragua, Salvador, Honduras and Costa Rica in 1907, at the Conference held in Washington, entered into a Convention providing, among other things as follows:

The Governments of the High Contracting Parties shall not recognize any other government which may come into power in any of the five Republics as a consequence of a *coup d'état*, or of a revolution against a recognized government,

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so long as the freely elected representatives of the people have not constitutionally reorganized the country.

Whether or not this is thought to be a practical remedy, it was one actually resolved upon. When the Central American Republics met again in Washington in 1922, they reformed their treaties in the light of the experience of the preceding fifteen years. They definitely determined, on their own initiative, to continue the policy of recognition to which I have referred and to strengthen it. They provided in their Convention as follows:

Desiring to make secure in the Republics of Central America the benefits which are derived from the maintenance of free institutions and to contribute at the same time toward strengthening their stability, and the prestige with which they should be surrounded, they declare that every act, disposition or measure which alters the constitutional organization in any of them is to be deemed a menace to the peace of said Republics, whether it proceed from any public power or from the private citizens.

Consequently, the Governments of the Contracting Parties will not recognize any other government which may come into power in any of the five Republics through a *coup d'état* or a revolution against a recognized government, so long as the freely elected representatives of the people thereof have not constitutionally reorganized the country. And even in such a case they obligate themselves not to acknowledge the recognition if any of the persons elected as President, Vice-President or Chief of State designate should fall under any one of the following heads:

- (1) If he should be the leader or one of the leaders of a

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coup d'état or revolution, or through blood relationship or marriage be an ascendent or descendent or brother of such leader or leaders ;

(2) If he should have been a Secretary of State or should have held some high military command during the accomplishment of the *coup d'état*, the revolution, or while the election was being carried on, or if he should have held this office or command within the six months' preceding the *coup d'état*, revolution, or the election.

Furthermore, in no case shall recognition be accorded to a government, which arises from election to power of a citizen expressly and unquestionably disqualified by the Constitution of his country as eligible to election as President, Vice-President or Chief of State designate.

It was in view of this policy definitely determined upon, that our Government refused in 1925-1926 to recognize Chamorro as president of Nicaragua. Chamorro had obtained power by a *coup d'état*,—the seizure and imprisonment of cabinet officers of the constitutional administration, the dominance by force of the capital, and the expulsion of members of Congress. Apparently, he believed that if by his flagrant disregard of constitutional rights he was successful in obtaining control of administration, our Government would give its recognition, although we had repeatedly announced that we should respect the treaties of 1907 and 1923.

While the United States was not a party to the treaties, the conferences of 1907 and 1923 were held in Washington with the friendly cooperation of our

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Government. The Secretary of State of the United States presided at the conference of 1923 at the request of the five Republics, and it is plain that if the United States disregarded the provisions of the treaty between them relating to recognition it would have no practical effect. The question, therefore, as to the recognition of *de facto* governments, must be viewed in this aspect with respect to Central America. The United States has had the option either of encouraging this effort on the part of the Central American Republics to promote constitutional government or of discouraging or nullifying it. It is said by some critics that we have brought upon ourselves no little trouble by the consideration of the constitutional questions and the particular exceptions for which the treaty provides. But it is not clear that we should not have brought upon ourselves even greater trouble if we had disregarded the provisions of the treaty and thus have taken the side of revolutions as against constitutional government. It would be easy to show that for every embarrassment we incur on the one side we should have an equal or greater embarrassment on the other side. There had to be a choice, and it does not require much argument to show what the choice should be.

It may be said that the treaty itself was a mistake and that the United States should have dissuaded the Central American Republics from making such

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a treaty. Such a suggestion hardly deserves consideration as it would frankly place the United States on the side of bloodshed and disorder as opposed to an effort, even if difficult and at times unsuccessful, to promote stability. It is revolutions, bloodshed and disorder that bring about the very interposition for the protection of lives and property that is the object of so much objugation. We are fortunately free from the necessity of invoking this right of interposition with most of the countries with which we deal. We hope that the day will soon come when constitutional processes of government will be secure in Central America, and one way to try to make them secure is to recognize the provisions of their own treaties. This does not involve, and should not be a pretext for, an interference in their internal affairs, but is a recognition of the international obligations which they have assumed toward each other.

It should also be observed that when recognition is given to a government, definite legal consequences follow, and recognition should be predicated only of an unequivocal act. There may be many transactions and communications which fall short of recognition, as practical exigencies may require a sort of intercourse which is not intended to constitute recognition. Dealings may be necessary with revolutionary persons and bodies actually in control of territory, although recognition of government is not in contem-

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plation. Thus those who have been representing our Government in a country where a new régime has been established may continue to avail themselves of the opportunities of communication thus afforded pending the decision of the question of recognition. In such cases, care is taken to avoid the formal action which would be characteristic of dealing with a recognized government.

FURNISHING OF ARMS

THE President is empowered in case he finds that in any American country conditions of domestic violence exist, which are promoted by the addition of arms or munitions of war procured in the United States, to put an embargo upon the exportation of such arms or munitions of war from the United States to such country with such limitations as the President may prescribe. The object is to avoid the fomenting of revolution and also to avoid any basis for the contention that we are taking part in the struggle. Such embargoes have been laid and withdrawn at the discretion of the President. It is manifest that our relation to the established government of a country may have an important bearing upon our action. In some instances it is in our power by withholding arms to make a revolution difficult and in other instances the government itself may not desire the embargo as it may wish a supply of arms.

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Soon after we had recognized the government of General Obregon in Mexico, and as we were looking forward to a period of quiet and to opportunities of advantage to both parties, there was suddenly an attempt to overthrow the established government by violence. It was believed that the purpose of those engaged in this enterprise of arms was simply to determine by forcible measures the succession to President Obregon. It was not a revolution instinct with the aspirations of an oppressed people. It was a matter of personal politics. It was an effort to seize the presidency and it meant the suppression of all constitutional and orderly procedure. The contestants had taken possession of certain portions of the Mexican territory and either were claiming tribute from peaceful and legitimate American commerce or were attempting to obstruct and destroy it. In these circumstances, the Mexican Government asked the Government of the United States to sell it a limited quantity of arms and munitions. Our Government had the arms and munitions close at hand; it did not need them and could sell them if it wished. If the request had been denied, we should have turned a cold shoulder to the government with which we had recently established friendly relations and, whatever explanations we might make, we should in fact have given powerful encouragement to those who were attempting to seize the reins of govern-

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ment by force. The refusal to aid the established government would inevitably have thrown our influence on the side of those who were challenging the peace and order of Mexico and we should have incurred a grave responsibility for the consequent disturbances.

Such an exigency illustrates inescapable difficulties. No one doubts the right of private citizens of the United States to sell arms to revolutionists or foreign governments, in the absence of a convention or domestic legislation to the contrary or a disregard of the principles of international law. No one can question the authority of the United States to impose an embargo on the shipment of arms from its territory. No one can question the right of the United States to dispose of its surplus arms to a recognized government when there is no question of the violation of neutrality. These questions, however, are delicate and their determination involves the choices which all, even governments, must make between good and evil in a world of moral decisions. Without departing from the exercise of our normal rights, we are often in a position to influence proceedings in other lands and we should be as careful to exercise our admitted rights to good ends as we should be to avoid making good ends a pretext for an abuse of power. With regard to the placing of embargoes on shipments of arms, or of supplying arms where there

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is domestic violence in American countries, each case must be judged on its own merits.

LOANS AND INVESTMENTS

IN order to make a fair estimate of our relations to Latin America, it is necessary in connection with financial transactions, as well as with those of trade, to distinguish between the natural and uncontrolled activities of the people of the United States and the action of our Government. Aside from our present relation to certain water transportation, our commerce is in private hands. We have goods to sell and the Latin Americans need and buy them. They have products to sell and we purchase them. Ability on our part to sell our surplus production, and thus to maintain a high degree of productive activity, is the key to our prosperity and the maintenance and extension of our foreign trade is a matter of concern primarily to our wage earners, who depend upon opportunities for employment, and secondarily to those engaged in the multitude of transactions incident to commercial exchanges. The ability of the Latin American countries to find markets for their products is of course absolutely essential to their welfare. So far as our Government interferes, it is generally to impose restriction which are supposed to be expedient for the purpose of encouraging domestic production, of maintaining our

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standards of living, and of protecting the public health. Apart from the normal exchanges of foreign trade, our citizens invest their savings very largely in foreign enterprises. There is a wide demand abroad for the improvements and industrial undertakings, which are needed on every hand to make possible a more wholesome and abundant life. Labor must find employment abroad as well as at home and reasonably comfortable living requires a host of facilities to the supply of which we are in a position to contribute. As our investing public is rich beyond the dreams of earlier days, our surplus capital, not needed at home, naturally flows into these open channels abroad. And as Latin American countries give an increased assurance of stability and provide sounder fiscal and budgetary systems, they are less susceptible to the solicitations of adventurers who are interested merely as speculators seeking inordinate profits.

It should be noted, however, that recently there has been a tendency in certain Latin American countries to prevent by local laws and regulations the free flow of foreign capital into investments for the purpose of developing certain natural resources the control of which is regarded as especially important. For example, in Brazil, by constitutional amendment of 1926, many of the more important minerals have been reserved to the State on the ground that they

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are necessary for the national security and defense. The amendment to the Constitution provides that the mines, mineral beds and lands containing these minerals may not belong to aliens. In Chile a law was promulgated in December, 1926, providing that concessions or properties which are not developed within one year after the promulgation of the present law shall be void. In any event, whoever desires to exploit them must, in the same period, resurvey them under the supervision of the government. Colombia has recently promulgated a law reserving ownership of, and the right privately to exploit, the accumulations of hydrocarbons which may exist in public lands. It is too early to attempt to pass upon the effect of these provisions or of the regulations which may be established in pursuance of them. It may be well, however, at this point to say that the laws of the United States are very liberal with respect to the admission of foreign capital. Foreigners in general may participate directly or indirectly in the production of minerals in the United States except, in so far as concern public lands, they must be nationals of a country granting reciprocal privileges to citizens of the United States. As to petroleum, the public lands of the United States represent less than one-tenth of the current production. As to restrictions abroad, it is sufficient for the present purpose to say that there still remain large opportunities for investments in enter-

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prises in Latin American countries and that foreign capital is eagerly sought. The increase in our investments in these countries means much more than the sending of money. It frequently means the contribution of our best talent. We send our engineers and technical men, our trained managers of enterprises.

Loans to foreign governments form a large part of our foreign investments. It is necessary to bear in mind that loans to Latin American governments are not made by our Government, but by our citizens. The United States has made no loans to other governments since the War advances of 1917-1920. Latin American governments, both central governments and provinces, municipalities, and corporations officially guaranteed, seek to borrow money for various public works, to provide facilities of communication and public convenience,—highways, railroads, water works, electrical installations and a great number of public purposes, as well as for the refunding of earlier loans. They appeal to the investing public of the United States. There seems to be a popular impression that bankers in our country make the loans. Of course, they merely place the loans. It is the people of the United States, from the Atlantic to the Pacific, who buy the foreign bonds. They follow the judgment of the bankers, and the conservative judgment of American bankers in assuming the responsibility of taking and distributing

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issues of securities is of the highest importance. It cannot fail to be observed that the most significant fact in relation to these foreign loans is the confidence of the people of the United States, for the investment is at their risk. They put their savings into foreign hands, taking the promises of foreign governments, and thus place their dependence upon the integrity of these governments and the good intentions and prosperity of the peoples whom these governments represent. This sort of "economic penetration" may be regarded as the highest expression, from the material standpoint, of international confidence and good will.

Nothing is more significant in our Latin American relations than the extent to which Latin American government securities have been taken in recent years by the people of the United States. We are informed by the reports issued by our Department of Commerce⁷ that the public offerings of Latin American government securities in the United States in the year 1914 amounted to less than 15 million dollars. From 1915 to 1920 inclusive, the total of these issues publicly offered here reached only 125 million dollars, but from 1921 to 1927 inclusive, the total of Latin American government issues publicly offered in the United States amounted to over one billion four hundred million dollars or something over

⁷ Commerce Reports, January 9, 1928, p. 65.

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twenty-eight per cent of the total government securities offered in this country. There was a notable increase in the years of 1926 and 1927, the offerings of these two years amounting to over six hundred and fifty million dollars. Examination of these transactions clearly shows that they are controlled entirely by economic considerations and have no special significance with respect to the relation of our Government to the borrowing governments. Thus Argentina since 1922 has had the largest amount of issues. The following is a table showing the geographical distribution of loans to Latin American governments publicly offered in the United States during 1926 and 1927:⁸

<i>Issuer</i>	1926	1927
Argentina	\$88,293,000	\$109,352,000
Bolivia		11,885,000
Brazil	59,973,950	62,280,000
Chile	74,330,000	23,383,300
Colombia	28,320,250	53,200,000
Costa Rica	8,000,000	1,800,000
Cuba		9,000,000
Dominican Republic	3,300,000	5,000,000
Panama	5,800,000	1,500,000
Peru	16,000,000	57,960,000
Salvador	1,520,000	
Uruguay	31,671,000	
Total	\$317,208,200	\$335,360,300

It also appears that flotations of the central gov-

⁸ *ibid.*

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ernments of Latin America in both 1926 and 1927 exceeded those of provinces, municipalities or corporations officially guaranteed. More than two-thirds of the total of 1927 consisted of the loans to the central governments of Argentina, Brazil and Peru. There are, however, numerous loans to provinces, municipalities and corporations officially guaranteed. This is illustrated by the recent dollar loans of the City and Province of Buenos Aires, of the City and Province of Córdoba, of the Provinces of Mendoza, Santa Fé and Tucuman, in Argentina; of the Cities of Rio de Janeiro and Sao Paulo, Porto Alegre and of the States of Ceará, Maranhao, Minas Geraes, Pernambuco, Rio Grande do Sul, Santa Catharina, Sao Paulo, and Parano, in Brazil; of the Cities of Santiago and Valparaiso in Chile; of the Departments of Antioquia, Caldas, Gundinamarca, Cauca Valley, Tolima, and of the Cities of Bogotá, Medellin, Barranquilla, and Cali, in Colombia; and of Montevideo in Uruguay. Within a few days an issue of twenty million dollars of bonds of the Mortgage Bank of Chile, guaranteed by the Republic of Chile, has been placed on our market.

What is the relation of the Government of the United States to these loans to Latin American governments? Our Government does not negotiate them, procure them or promote them. They are sought by the borrowing countries because of their own concep-

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tion of their needs. It is not the practice of the United States to seek to obtain loans for foreign governments. The terms of the loans are fixed in the negotiations between the governments and the bankers acting as private concerns having the responsibility of using their distributing agencies to place the bonds with the American investors. The terms thus reflect the conditions of the market for securities and the negotiations are of the same sort as take place with European governments, municipalities and various enterprises in Europe seeking to borrow money here. The Government of the United States does not attempt to pass upon the soundness of these investments. They are made, as I have said, at the sole risk of the investor. It is quite apparent that no governmental agency has been entrusted with authority to pass upon the soundness of such transactions or to accept for the Government of the United States directly or indirectly any responsibility in relation to the ultimate repayment of the sums borrowed or to the maintenance of the market value of the securities issued.

Our Government in the conduct of its foreign relations plainly has a certain interest with respect to transactions of this sort, that is, that whatever may be their economic soundness or unsoundness, it would be unfortunate if they were of a character which would be in conflict with the foreign policy

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of this Government. After the Great War, in view of the large advances of our Government to foreign governments, of the importance of economic recovery abroad and the rehabilitation and encouragement of productive enterprises, and of the inadvisability of the use of American capital for militaristic or non-productive purposes in countries ravaged by war, the Government felt that it should ask bankers engaged in the flotation of foreign loans to inform the Government before they were consummated. The circular issued by the Department of State on March 3, 1922, requested information with respect to projected foreign loans. In connection with this request, the circular stated:

“The Department of State cannot, of course, require American bankers to consult it. It will not pass upon the merits of foreign loans as business propositions, nor assume any responsibility whatever in connection with loan transactions. Offers for foreign loans should not, therefore, state or imply that they are contingent upon an expression from the Department of State regarding them, nor should any prospectus or contract refer to the attitude of this Government. The Department believes that in view of the possible national interests involved it should have the opportunity of saying to the underwriters concerned, should it appear advisable to do so, that there is or is not objection to any particular issue.”

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This request for information did not have particular reference to loans to Latin American governments and had no direct bearing upon our policy toward Latin America. The Government in being advised as to contemplated loans is simply in a position to interpose an objection if it sees fit, but if it does not interpose an objection this simply means that there is nothing in the conduct of our foreign relations which affords ground for objecting to the loan, and not that from economic considerations the loan is deemed to be advisable or inadvisable or the security good, bad or indifferent. Apart from the impracticability of the Department of State attempting to pass upon the character of the investment as such, it has no legal competence to that end. Those who wish to lend their money abroad are free to do so and must satisfy themselves as to terms and risks. The Government, however, is entitled to be informed so that if a particular transaction has features which affect its conduct of foreign relations, it may be advised and assume such an attitude as the circumstances may justify.

Not only is it the practice of the Government of the United States not to take part in the negotiation of loans to foreign governments or the placing of their securities in the hands of investors, but our Government assumes no responsibility as to the repayment of the amounts borrowed. Nothing could

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be further from American policy than the suggestion of any assurance by our Government that ordinary contract debts will be collected by force. We never pledge the use of force to collect debts; in fact we have opposed the use of force for such a purpose on the part of other governments. Our established policy has frequently been officially stated. In 1871, Mr. Fish, Secretary of State, observed that "our long settled policy and practice has been to decline the formal intervention of the Government except in case of wrong and injury to persons and property such as the common law denominates *torts* and regards as inflicted by force, and not the result of voluntary engagements or contracts."⁹ President Roosevelt in 1906, made the following statement:

"It has long been the established policy of the United States not to use its armed forces for the collection of ordinary contract debts due to its citizens by other governments. We have not considered the use of force for such a purpose consistent with that respect for the independent sovereignty of other members of the family of nations which is the most important principle of international law and the chief protection of weak nations against the oppression of the strong. It seems to us that the practice

⁹ See statement of General Horace Porter on behalf of the delegation of the United States at the Second Hague Conference, 1907; "Proceedings," Carnegie Endowment publication, Vol. II, p. 230.

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is injurious in its general effect upon the relations of nations and upon the welfare of weak and disordered States, whose development ought to be encouraged in the interests of civilization; that it offers frequent temptation to bullying and oppression and to unnecessary and unjustifiable warfare. We regret that other powers, whose opinions and sense of justice we esteem highly, have at times taken a different view and have permitted themselves, though we believe with reluctance, to collect such debts by force. It is doubtless true that the non-payment of public debts may be accompanied by such circumstances of fraud and wrong-doing or violation of treaties as to justify the use of force. This Government would be glad to see an international consideration of the subject which shall discriminate between such cases and the simple non-performance of a contract with a private person, and a resolution in favor of reliance upon peaceful means in cases of the latter class."¹⁰

At the Second Hague Conference, the delegation of the United States submitted a proposition upon this subject and in its support our representative, General Horace Porter, said:

"The principle of non-intervention by force would be of inestimable benefit to all the interested parties. First, to the nation whose subjects or citizens have become creditors of a foreign government, in that

¹⁰ *ibid.*, Vol. II, pp. 230, 231.

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it would be a warning to a certain class of persons, who are too much disposed to speculate on the needs of a weak and embarrassed government, and count on the authorities of their own country to assure the success of their operations. It would enable the government to continue its normal relations with the foreign state, avoid incurring its ill-will and suffering perhaps a loss of its commerce. Such an attitude would also save it from all risks of complications with neutral powers.

“Secondly, recognition of this principle would be a real relief to neutrals; for blockades and hostilities seriously threaten their foreign commerce by interrupting all trade.

“Thirdly, debtor States would find it to their advantage, for it would be a warning that thereafter money-lenders could only count on the good faith of the government, the national credit, the justice of local courts, and the economical administration of public affairs, to answer for the success of their transactions. This would relieve such States from the importunities of the speculative adventurer who tempts them with the proffer of large loans, which may lead to national extravagance and in the end threaten the seizure of their property and the violation of their sovereignty. The knowledge that all disputed pecuniary claims would be subject to adjudication by an impartial tribunal would be apt to lead

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prominent bankers and contractors to feel that such claims would be settled promptly without serious disturbance to the administration of the country's public affairs, and without the necessity of assuming the task of prevailing upon their government to undertake the collection of their claims by force of arms. In such case responsible financial men and institutions abroad would be more likely to negotiate loans and make their terms fair and reasonable. The Permanent Court of Arbitration at The Hague would naturally be given the preference for the settlement of such claims."¹¹

The result of the discussion was the adoption by The Second Hague Conference of a convention which provided:¹²

The Contracting Powers agree not to have recourse to armed force for the recovery of contract debts claimed from the government of one country by the government of another country as being due to its nationals.

This undertaking is, however, not applicable when the debtor State refuses or neglects to reply to an offer of arbitration, or, after accepting the offer, prevents any "*Compromis*" from being agreed on, or, after the arbitration, fails to submit to the award.

This convention was ratified by the United States. It does not appear that under this provision there

¹¹ *ibid.*, Vol. II, pp. 231, 232.

¹² "Proceedings," Carnegie Endowment publication, Vol. I, p. 616;
2 Malloy's Treaties, p. 2254.

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would be any distinction between obligations arising on public securities and other contractual obligations. Several of the Latin American countries made reservations to this convention. The reservation of the Argentine Republic was as follows:¹⁸

1. With regard to debts arising from ordinary contracts between the citizen or subject of a nation and a foreign Government, recourse shall not be had to arbitration except in the specific case of a denial of justice by the courts of the country where the contract was made, the remedies before which courts must first have been exhausted.

2. Public loans, secured by bond issues and constituting the national debt, shall in no case give rise to military aggression or the material occupation of the soil of American nations.

This whole question is now receiving the most careful consideration in connection with projects for the codification of international law.

The policy of the Government of the United States with relation to foreign investments should be well understood. (1) There is the policy of the open door. We seek equality of opportunity for our nationals. We do not attempt to make contracts for them. It is not our policy to seek exclusive advantages for our nationals or to support them in trying to obtain exclusive rights. From time to time representatives of responsible American concerns have the

¹⁸ *ibid.*, Vol. I, p. 700; 2 Malloy's Treaties, pp. 2255, 2256.

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support of an appropriate introduction to the officials of foreign governments. We do not favor one of our nationals as against another. Given the open door, all who wish are entitled to walk in. We resist policies of discrimination against American capital. This is true whether it relates to oil or telegraphs. (2) When foreign governments appear to deal in an unfriendly manner with our nationals or deny them justice, we make representations suited to the exigency. Our processes are those of reason and if there are claims as to which justice is denied we should seek to effect resort to a proper international tribunal. (3) We object to confiscation, that is, the taking of private property without just compensation and to repudiation of just obligations. We have no desire to interfere with the establishment or exercise of any country of its proper domestic jurisdiction. If our nationals acquire title to property in other countries, they acquire it under the laws of the jurisdiction. But if they acquire a valid title, we hold it to be a condition of intercourse in the society of civilized nations that it should not be confiscated. What is confiscation may in some cases be a difficult question to answer. The decisions of our Supreme Court are full of instances where confiscation has been asserted but, in the opinion of the Court, has not been established. Recognition of the difficulties in many border-line cases, however, affords no excuse for a defense of a

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policy of confiscation, which in many instances is obvious enough and which international law condemns.

There are special instances where we have a particular relation to foreign loans to which I should call attention. One class of these instances is found in the execution of certain treaties. By the Platt Amendment, and the treaty with Cuba of 1903, it is provided that the Government of Cuba shall not assume or contract any public debt to pay the interest upon which, and to make reasonable sinking fund provision for the ultimate discharge of which, the ordinary revenues of Cuba, after defraying the current expenses of the government, shall be inadequate. This treaty creates a special relation with respect to the public debt of Cuba. By treaty with the Dominican Republic of 1907, readjustment of the debts of the Dominican Republic and of claims against it was dependent upon the assurances of the United States in relation to the collection of customs revenues, and a treaty was made for the appointment of a General Receiver of Dominican customs and the application of the described revenues to the expenses of the receivership and the discharge of obligations. By the treaty with Haiti in 1915, the United States agreed by its good offices to aid the Haitian Government "in the establishment of the finances of Haiti on a firm and solid basis." Provision was made for

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the appointment by the President of Haiti upon nomination by the President of the United States of a General Receiver to collect and apply custom duties on imports and exports and of a Financial Adviser to devise an adequate system of public accounting, to aid in increasing the revenues and adjusting them to the expenses and to make recommendations deemed to be necessary for the welfare and prosperity of Haiti. This necessarily creates a special situation with regard to Haitian loans.

There are instances of another class where governments and those contemplating the making of loans agree upon terms, but desire the friendly assistance of our Government in procuring the appointment of a properly qualified and impartial person to act under the agreement between the parties as a custodian of revenues or to act as an arbitrator in case questions arise with respect to the construction and performance of the contract. In such instances, the question comes up because of the risk that is believed to be incident to the making of the loan and the difficulty of the borrowing government in providing security. The pledge of its revenues is a natural way of giving security, but who will hold the pledge? Both parties ask the Department of State for a suggestion of a competent person and the Department, while being willing to help the parties to this extent, takes pains to avoid any fur-

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ther responsibility. The result is that a government by reason of its being able to satisfy the lenders obtains better terms. I am informed on good authority that a careful examination of the terms upon which government loans have been obtained in recent years shows that where the United States has had this exceptional relation to certain of the smaller countries they have had a more favorable credit rating and have been able to borrow money on better terms than the stronger countries of Latin America. I know of instances in which the Department of State has refused to consider the use of its friendly offices even to the extent of recommending impartial persons to act under a contract between our nationals and another government, in case of disagreement between the parties, unless the terms of loans were made more reasonable in the interest of the borrowing government. But, as I have said, in the normal case, and in the absence of the request of such friendly offices or the carrying out of treaties, our Government has no part in the arrangements for the loans.

FINANCIAL ADVISERS

DISTINCT from action authorized or required by treaties, from time to time eminent citizens of the United States are requested by Latin American governments to aid them by giving advice for the improvement of their fiscal systems. The services of

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such experts have at times been obtained without the assistance of our Government and sometimes our Government has been requested to suggest names. In not opposing the selection of advisers of this class and in suggesting competent men at the request of other governments, the United States has had no ulterior motive whatever and it has not had, and has not sought to exercise, control or authority of any sort over the advisers. If our Government had refused either to give information or had objected to the selection of distinguished American economic experts for such services, it is hardly necessary to say that we should have assumed an attitude toward our neighbors which would naturally have been resented by them and would have offended public sentiment in this country. This University (Princeton) has repeatedly permitted a distinguished member of its staff, Professor Edwin W. Kemmerer, to assume these duties and he has rendered services of inestimable value in advising several of the Latin American governments.

III

INTERVENTION—PROTECTION OF LIVES AND PROPERTY

WITH this subject, as with others, in this necessarily limited discussion, I can give you only a point of view and cannot attempt to state with any sort of comprehensiveness either the learning of the law or the details of particular situations. Confusion of thought is frequently due to broad assertions in which the question is treated as one simply of intervention or non-intervention, with no adequate regard to the question as to what particular action is justified and what is unjustified. It is said that we have intervened a certain number of times in certain countries, as though such a statement in itself afforded a criterion for criticism. With such general assertions there are often combined references to our acquisition of Porto Rico, although that island came to us as the result of the Spanish War, and of the Virgin Islands which were ceded to us and for which we paid. "Interventions" are chronicled without reference to our treaty rights and obligations. Thus it is said, as a part of the general indictment, that we have inter-

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vened twice in Cuba. We did intervene originally without treaty and in the interest of humanity to free Cuba from Spanish domination. We need make no apology for that either to Europe or to Latin America. We abated a nuisance at our door and gave Cuba her opportunity for a new and vigorous national life. In so doing, we expressly reserved, to avoid the recurrence of intolerable conditions, "the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property and individual liberty, and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States" which were assumed by the Government of Cuba. Without reviewing the circumstances of our action under this treaty, or our endeavors to promote the interests of the Cuban people, it is plain that the significant thing in our interventions was not that we went in but that we came out. We demonstrated our interest in Cuban freedom at the beginning and we have kept on demonstrating it since. We wish for Cuba the prosperity and stability of an independent State and instead of looking for opportunities to take advantage of the treaty right, the dominant sentiment of our people is just the reverse and we should be happy to have no thought of the exercise of the right because of the absence of any exigency in which it could with any propriety be invoked.

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We made a treaty, as I have already stated, with the Dominican Republic in 1907, and undertook certain responsibilities in relation to the collection of customs. In the forty years prior to that treaty there had been sixteen revolutionary movements in Santo Domingo, resulting in complete political and economic demoralization. The arrangement of 1907 was believed to be advantageous to Santo Domingo, but there was a recurrence of revolutionary disturbances and it was charged that the Dominican Government had failed to observe the terms of the convention. On this ground, and civil war being imminent, the United States landed naval forces in 1916, to prevent further bloodshed. On this occupation a military government was established and was maintained for several years. Whether the Government of the United States was justified in setting up this military régime is a question upon which much can be said on both sides. But it is a particular situation which should be dealt with on its merits in the light of the actual facts of the case. Again, the significant thing, with respect to the general policy of the United States, is that the United States did not try to stay in Santo Domingo, but sought to get out and did get out. The leaders of the political parties were brought together. A plan for a provisional government was developed and for ultimate evacuation on the establishment of a permanent government. This plan was

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carried out and the American occupation was terminated. We have had a more aggravated situation to deal with in Haiti. I may briefly state the conditions as I have set them forth in another connection.¹ From 1886 until 1915, every President of Haiti, except one, had been overthrown by revolution, some escaping, others being assassinated. The Republic had reached a stage of exhaustion and devastation more complete than at any prior period. The foreign relations of the Haitian Government had become seriously involved because of the pressure brought to bear by the Governments of France, Great Britain, Germany, Italy, and the United States to obtain a settlement of the claims of their nationals. Because of the unwillingness or inability of the Haitian people to settle these claims satisfactorily, there were armed demonstrations; armed forces of foreign powers had been landed at various points in Haiti on the ground that the lives and property of their nationals were in danger. In 1914-1915, there were continuous disturbances which culminated in the latter year in the murder by armed mobs of Zamor, a former president, and President Sam, the latter having been dragged by a mob from the French legation and torn to pieces in the street. Members of the cabinet took refuge in foreign legations or escaped from the coun-

¹ Observations on the Monroe Doctrine; "Pathway of Peace," pp. 131 *et seq.*

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try so that there was no executive to assume direction of affairs. It was in this situation that American forces were landed in Haiti in 1915, and a government was set up under the protection of the United States marines. It appeared to be necessary from the standpoint of humanity to aid the Haitian people to free themselves from the hopeless conditions in which they were involved. Accordingly, a treaty was negotiated by our Government with the new President in which we agreed by our good offices to assist the Haitian Government "in the proper and efficient development of its agricultural, mineral and commercial resources" and, as I have already stated, "in the establishment of the finances of Haiti on a firm and solid basis." Detailed provisions were made looking to that end. There can be no question that the American assistance which has been continued to the present time has brought to the people of Haiti enormous benefits. We do not wish to remain in Haiti. We wish to leave as soon as we can do so with assurance that there will not be a recurrence of bloodshed and a disregard of the obligations of international intercourse which might require renewed interposition on the part of our Government. It may be said that the reference to the making of a treaty with Haiti, in such conditions as those which existed in 1915, is ironical; that it was an agreement imposed by our will and represented our wishes.

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If this be so, these wishes, as the treaty discloses and the event has proved, were in the interest of the Haitian people. Further, will any defender of the Treaty of Versailles be heard to say that a treaty is without obligation because it is imposed? It is not asserted that there may not be ground for criticism of details of administration, but the purpose and, in general, the beneficial results appear quite clear to the impartial observer. The point that I desire to make is that instead of general talk of "interventions" and an indiscriminate use of the label, there should be examination of the facts of particular cases and consideration of the applicable principles so that criticism may proceed and public opinion be formed with a reasonable discrimination.

The general policy of the United States, as frequently set forth, is one of non-intervention. It was of the essence, as I have pointed out, of the Monroe Doctrine, that the American States should have opportunity for the enjoyment of independence free from the interference of European powers. Said Mr. Webster when Secretary of State: "The great communities of the world are regarded as wholly independent, each entitled to maintain its own system of law and government, while all in their mutual intercourse are understood to submit to the established rules and principles governing such intercourse. And the perfecting of this system of communication

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among nations, requires the strictest application of the doctrine of non-intervention of any with the domestic concerns of others.”²

Treating intervention “as the attempt of one or more States, even by use of force, to coerce another State in its purely State action,” it is evident that there must be special grounds to justify it. Such grounds can be found in the requirements of self-defense and in the interest of humanity. Cuba may be regarded as a typical illustration of the latter exception. Judge Moore classifies intervention as political and non-political.³ Under non-political intervention is placed the appropriate protection of citizens and cases of denial of justice. The difficulty that is presented to our Government, especially in the Caribbean region, is due to instability and to the breakdown of governments so that they are unable to perform their proper functions, leaving the lives and property of our nationals temporarily without protection. Professor Borchard observes that the giving of armed protection in such cases of emergency “has by some writers been denominated as intervention and has given rise to much confusion, due to a failure to distinguish between political intervention and non-political intervention or interposition. The landing of armed forces for the protection of citi-

² Moore's International Law Digest, Vol. VI, pp. 15, 16.

³ *ibid.*, Vol. VI, pp. 2, 247.

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zens," he continues, "has practically always been free from any attempt to interfere in the internal political affairs or administration of the country entered, and when confined to the purpose of assuring the safety of citizens abroad, or exacting redress for a delinquent failure to afford local protection, the action must be considered, not as a case of intervention, but as non-belligerent interposition."⁴ In Professor Hyde's work the term intervention is used in the narrower sense; as he says: "It is not employed to refer to those cases where, for example, territory is temporarily invaded on grounds of self-defense, or for the protection of nationals resident therein, and with no further object or result."⁵ These references are sufficient to indicate opinions held on this subject in the United States.

In considering these delicate questions in the light of our desire to maintain the most cordial relations with the Latin American Republics and to give no occasion for the apprehension which we know to be unfounded, there are certain points that should be kept clearly before us. The first is that the people of the Latin American Republics resent intervention of any sort, of any possible description, anywhere. They are not disposed to draw distinctions or to admit justifications. They treasure their indepen-

⁴ "Diplomatic Protection of Citizens Abroad," p. 448.

⁵ "International Law," Vol. 1, p. 117.

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dence as their most precious possession. They are intensely nationalistic. On our part there is no disposition to forego our right to protect our nationals when their lives and property are imperilled because the sovereign power for the time being and in certain districts cannot be exercised and there is no government to afford protection. I venture to say that no President of the United States, and no Secretary of State, of any party, or of any political views, learning that the lives and property of our citizens were in immediate danger in such a case, would care to assume the personal responsibility of withholding the protection which he was in a position immediately to give. If he did, and the event accorded with the anticipation, he would be condemned throughout the land.

In view of this inescapable situation, it is manifest that we should make clear precisely what we propose to do, and what we propose not to do. It should be evident that our policy is that of non-intervention; that we limit our interposition to a pressing exigency well established; that we are not seeking control of the peoples of other lands or to interfere with the governments they desire; that our purposes are reasonable and can readily be justified to governments that accept the principles of international law and perform their admitted international obligations. When we act under treaties, we

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should make it clear to public opinion that the action is in the exercise of a treaty right and we should be more eager to forego a right than to exercise it where it is not to the advantage of our neighbors. We are determined to safeguard the Panama Canal, and that policy is well understood and approved. But it should never be a pretext for action having no reasonable relation to the protection of the Canal and, if in a particular case there is such a reasonable relation, it can be made plain. Despite the intense nationalism of the Latin American Republics, and despite the difficulties caused by those who seek in both countries to create misunderstanding and those equally difficult persons who can never be made to understand, we should be able to present plain and defensible policies which will meet with no general opposition because of their reasonable character. I have said nothing of the situation at the moment in Nicaragua for that is a special case. In its initial stage it called for a consideration of our policy in the light of the Central American treaties to which I have referred. It also involved the question of affording protection to life and property. Those questions, however, have become academic in view of the agreement of both the parties in Nicaragua that the United States should supervise the coming elections in the interest of fairness to both. We have undertaken that duty and under that agreement we

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must discharge it. We cannot recede from that obligation definitely incurred. That is the present Nicaraguan situation.

PACIFIC SETTLEMENT OF DISPUTES BETWEEN AMERICAN STATES

THE record of the American States in providing for the pacific settlement of their controversies is a most remarkable one. Despite the difficulty of the questions that have arisen, the serious antagonism of interests, especially in relation to boundaries, which have at times resulted in the conflicts of arms, the disposition on the whole has been notably in favor of pacific measures of settlement. There have been approximately two hundred and fifty treaties for arbitration and for the advancement of peace between American States. These include treaties of a general character and those limited to particular disputes. Not all of these agreements have been ratified by the signatories, but their negotiation, and the extent to which they have been executed, reflect a gratifying tendency. Judge Moore tells us that "during the nineteenth century there were eighty-four international arbitrations to which an American nation was a party. In forty, or nearly one-half, of these the other party was a European power, the arbitrations between American nations being forty-four. To about two-thirds of these the United States was

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a party, the number of arbitrations between other American powers being fourteen. Of this number, there were ten that related to questions of boundary."⁶ On the whole the Western Hemisphere is entitled to the designation of the hemisphere of peace.

The United States has used its influence to promote settlements between the American States and non-American powers. I have already referred to noteworthy illustrations of this. With respect to controversies between the American States themselves, I think it must be generally recognized that the United States has never adopted the policy of fomenting strife, has never sought by intrigue to set one of the American Republics against another, and has not attempted to derive advantage for itself from the disputes that existed. That of itself is an answer to much that is asserted in criticism of the policies of the United States in relation to the Latin American Republics. There have been abundant opportunities for the United States so to use its power, had it cherished the purpose of dominating its neighbors, and the neglect of these opportunities in itself characterizes our attitude. Our diplomatic correspondence is full of the evidence of our endeavors in the interest of peace and our readiness to use our good offices for this purpose whenever these were welcome.

⁶ International Law Digest, Vol. VII, p. 71.

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The Conference of the five Central American Republics in 1907, and the Conference of these Republics in 1922-1923, both held in Washington at the invitation of the United States, attest the desire of this Government to promote stability and friendly relations with the object of making as secure as possible the independence and peace of these countries. From time to time difficult situations have been successfully dealt with through our friendly assistance. Only recently the boundary dispute between Colombia, Peru and Brazil was satisfactorily adjusted on the formal adoption of the suggestion made a few years ago by the Secretary of State of the United States. Both the Chief Justice of the United States and the President of the United States have been chosen as arbitrators of serious controversies. Thus the boundary dispute between Costa Rica and Panama, and the controversy between Costa Rica and Great Britain as to transactions during the Tinoco régime, were submitted to the Chief Justice of the United States.

The gravest dispute of recent years has been the long standing Tacna-Arica controversy between Chile and Peru, which for forty years disturbed their relations and hung like a cloud over Latin America. With the approval of the two governments, our Government extended to them an invitation to meet in conference at Washington for the purpose of secur-

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ing an adjustment. The controversy related to the unfulfilled provisions of the treaty of peace of October 20, 1883. These provisions were found in Article 3 of that treaty, known as the Treaty of Ancon, relating to the disposition of the provinces of Tacna and Arica. The Article in question provided that, after the expiration of a period of ten years from the ratification of the treaty, there should be a plebiscite which should "decide by popular vote whether the territory of the above-mentioned provinces is to remain definitely under the dominion and sovereignty of Chile or is to continue to constitute a part of Peru." At the meeting in Washington a protocol of arbitration was signed submitting the questions arising out of the unfulfilled provisions of the Article to the arbitration of the President of the United States. It is no secret that the President, and his adviser, the Secretary of State, were reluctant to have this responsibility assumed and that it would not have been assumed had it not appeared that no other arbitrator could be agreed upon and that if his consent to act as arbitrator was not obtained the entire effort at amicable adjustment would fail. The scope of the arbitration was defined by a Supplementary Act. The first point submitted for decision was the question "whether, in the present circumstances, a plebiscite shall or shall not be held." If the holding of the plebiscite was declared to be in order, the arbitrator

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was empowered to determine its conditions. If the arbitrator decided that a plebiscite should not be held, both parties, at the request of either of them, were to discuss the situation brought about by such an award. Meanwhile, pending an agreement as to the disposition of the territory, the administrative organization of the provinces was not to be disturbed. If no agreement was reached, both governments were to solicit, for this purpose, the good offices of the Government of the United States. There was also included in the arbitration the claims with respect to Tarata and Chilcaya, that is, questions relating to the proper boundaries of the provinces of Tacna and Arica on the north and south to which the provisions of Article 3 of the Treaty of Ancon had reference.

The President undertook this difficult and unwelcome task solely in the interest of the two countries and of the general peace of Latin America. There have been those who have suggested that instead of an arbitral agreement, with its submission of a specific question, there should have been an endeavor to reach a diplomatic solution. Such observations wholly ignore the fact that for forty years the effort had been made to find a diplomatic solution without success. The controversy hinged about the right to a plebiscite and the conditions on which it should be held. On the one side it was contended that there was a right to the plebiscite and there was an

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absolute refusal to surrender it. On the other side, it was insisted that there was no longer any right to a plebiscite. It was a notable advance when it was agreed by the parties that the question whether the right existed under the treaty should be left to arbitration. The Arbitrator was thus called upon to decide the rights under the treaty in accordance with the principles believed to be applicable thereto, and he reached the conclusion that the provisions of Article 3 were still in effect, that the plebiscite should be held, and that the interests of both parties could properly be safeguarded by conditions. The Arbitrator then set forth the conditions which should govern the plebiscite. The Arbitrator also decided that no part of the Peruvian province of Tarata was included in the territory covered by the provisions of Article 3 of the Treaty of Ancon and that the territory to which that article related was exclusively that of the Peruvian provinces of Tacna and Arica as they stood on October 20, 1883. Provision was made for drawing the boundary lines. Under the award a Plebiscitary Commission was established with General Pershing at its head and proceedings were taken to hold the plebiscite. Unfortunately, these proceedings were not successful. I shall not attempt to detail the reasons. I simply desire to emphasize the interest of the Government of the United States in promoting a peaceful settlement. It may also be said

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that while before the award and the effort to conduct the plebiscite there was no possibility of any fruitful discussion of a diplomatic solution aside from the terms of the treaty, the proceedings at least have had the result of opening the way to diplomatic negotiations and these have taken place. Although no settlement has yet been reached, it is hoped that both parties influenced by a desire for peace, and to end a controversy which is to the advantage of neither, will find it possible to agree upon an adjustment and it is understood by all that the impartial good offices of the Government of the United States are always available.

GENERAL PLANS OF ARBITRATION

JUDGE Moore has given us a succinct review of the efforts to promote international arbitration on the American continents.⁷ The examination of the record puts in a strong light not only the sincerity of efforts, and the measure of success, but the difficulties of achievement in this endeavor. It was one of the objects of the Panama Congress of 1826, of the effort of Mexico in 1831, of the Congress of the Spanish nations of America at Lima in 1864, and of the endeavor under the auspices of Chile and Colombia in 1880. The subject of a general plan of arbitration has been much discussed in the Pan American Con-

⁷ International Law Digest, Vol. II, pp. 71-73.

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ferences which were initiated by our own Government. When Mr. Blaine, as Secretary of State, in 1881, extended an invitation to the Latin American governments to participate in a conference in Washington it was stated that it was to be held "for the purpose of considering and discussing methods of preventing war between the nations of America." Mr. Blaine observed that the President desired that the attention of the congress should be "strictly confined to this one great object." That meeting had to be postponed and the First International Conference of American States, on this initiative, met in Washington in 1889. It adopted a plan of arbitration which declared that this method of settling disputes between American Republics was "a principle of American international law"; that arbitration should "be obligatory in all controversies concerning diplomatic and consular privileges, boundaries, territories, indemnities, the right of navigation, and the validity, construction, and enforcement of treaties"; and that it should be equally obligatory in all cases other than those above mentioned save where in the judgment of any one of the nations involved it might imperil its independence, but that, in such a case, while arbitration for that nation should be optional, it should be obligatory upon the adversary power. A plan of a treaty of arbitration was signed by eleven American States. President Harrison in transmitting

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the treaty to the Senate stated that its ratification would "constitute one of the happiest and most hopeful incidents in the history of the Western Hemisphere." It appears that no ratifications were filed before the day set by the treaty, and the United States suggested an extension of time. But as the treaty was rejected by some important governments of South America and its revival was advocated only by a few, the negotiations were not advanced. It does not appear that the treaty was ever called up for consideration in our Senate. The only Latin American country that had representatives at the First Hague Conference of 1899 was Mexico. At the Second International Conference of American States held in Mexico, 1901-1902, there was much discussion of arbitration. The United States favored adhering to The Hague Convention. A protocol was signed and The Hague Convention of 1899 was adhered to a few years later by seventeen American States, in addition to the United States and Mexico who were signatories.⁸ At the Second International Conference, a project of a treaty of compulsory arbitration was signed by the delegations of nine States.⁹ There was an additional project of a Claims Convention which was to be obligatory for five years which was signed

⁸ 2 Malloy's *Treaties*, p. 2016.

⁹ Manning, "Arbitration Treaties Among the American Nations," p. 307.

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by the delegations represented at the conference. It was to come into force as soon as five States had ratified it. It was ratified by eight States, including the United States, and on the ratification of five of these it was proclaimed by the President of the United States in 1905.¹⁰

The Third Conference of American States was held at Rio de Janeiro in 1906. The circular note proposing the program for the Second Hague Conference (convened in 1907) had already been issued. The Pan American Conference adopted a resolution affirming their adherence to the principle of international arbitration and recommending the instruction to the delegates to The Hague Conference accordingly. A Claims Convention was adopted which continued in force the Convention of 1902 until 1912, and this was ratified by the United States and eleven of the Latin American Republics.¹¹ Nineteen American States, including the United States, were represented at The Hague Conference of 1907, that is, all except Costa Rica and Honduras. These States, with the exception of Nicaragua which adhered later, joined in The Hague Convention for the pacific settlement of international disputes which, I understand, has been ratified by nine of them (by some

¹⁰ Manning, p. 313; 2 Malloy's Treaties, p. 2062.

¹¹ Manning, p. 362; 3 Malloy's Treaties, p. 2879.

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with reservations) including the United States.¹² In view of the right of the parties to this convention to conclude agreements, with a view of referring to arbitration all questions which they could consider to be possible to submit to such treatment, the Root arbitration treaties were negotiated in 1908 and 1909, with a number of countries, including many of those of Latin America. These provided that differences which may arise of a legal nature or relating to the interpretation of the treaties existing between the two contracting parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration at The Hague, provided that "they do not affect the vital interests, the independence, or the honor" of the contracting parties and "do not concern the interests of third parties." It was further provided that in each individual case the parties should conclude a special agreement defining clearly the matter in dispute, the scope of the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure. Such special agreements were to be made on our part by the President by and with the advice and consent of the Senate and on the part of the other party in accordance with the procedure required by its constitution. Such treaties were made with Mex-

¹² Manning, p. 368; 2 Malloy's Treaties, p. 2220.

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ico, Peru, Salvador, Haiti, Uruguay, Costa Rica, Brazil, Paraguay and Ecuador. These treaties were for five years and in certain cases were extended for another like period. The Fourth Pan American Conference which met at Buenos Aires in 1910, adopted a general claims convention providing for the submission to the Permanent Court of Arbitration at The Hague, unless both parties agreed to constitute a special jurisdiction, all claims for pecuniary loss or damage which could not be amicably adjusted through diplomatic channels and which were of sufficient importance to warrant the expense of arbitration. The convention was to come into force on the expiration of the existing claims convention in 1912, and was to remain in force indefinitely as well for the governments which should then have ratified it as for those which should ratify it subsequently. It can be denounced by any nation on two years' notice. This was ratified by the United States and, it is understood, by eleven Latin American Republics. It was proclaimed by the President of the United States in 1914.¹³

As distinguished from arbitration, the First Hague Conference (1899) had proposed the establishment of international commissions of inquiry by special agreements. The purpose was to inquire into the facts and not to have an arbitral award. It left

¹³ Manning, p. 469; 3 Malloy's Treaties, p. 2922.

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the conflicting powers entire freedom as to the effect to be given to the statement of the commission. The Second Conference of American States held in 1902 made a similar proposal. The arbitration treaty negotiated by the Taft Administration with Great Britain provided for a Joint High Commission of Inquiry, upon the request of either party "for impartial and conscientious investigation" of any controversy within the scope of the article relating to arbitration, before such controversy has been submitted to arbitration, and also any other controversy even if the parties were not agreed that it fell within the scope of the arbitration provision. This treaty did not go into effect as the amendments made by the Senate were not acceptable to the administration. In 1913 and 1914 the Bryan treaties for commissions of inquiry were made with a large number of the American States including Guatemala, Honduras, Bolivia, Costa Rica, Venezuela, Peru, Uruguay, Brazil, Chile, Paraguay and Ecuador. On account of the World War the Fifth Pan American Conference did not convene until 1923, when it was held in Santiago. An important treaty was then formulated which has been called the Gondra Convention, which was a general treaty "to avoid or prevent conflicts between the American States" and which provided that all controversies "for any cause whatsoever" which it had been impossible to settle through diplomatic

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channels, or to submit to arbitration in accordance with existing treaties, should be submitted for investigation and report to an international commission. The parties undertook in case of disputes not to begin mobilization or concentration of troops on the frontier of the other party, nor to engage in any hostile acts or preparations for hostilities, from the time steps were taken to convene the commission until it had rendered its report. The commission was to report within a year (unless the time was extended) and a further period of six months was allowed in order to give opportunity for renewed negotiations to bring about a settlement of the difficulty in view of the findings of the report. If the parties were unable to reach a friendly arrangement, they recovered their entire liberty of action to proceed as their interests might dictate. It was provided that two permanent commissions were to be set up with their seats at Washington and Montevideo. Each was to be composed of the three American diplomatic agents longest accredited in these capitals, and at the call of the foreign offices of the United States and Uruguay respectively, they should organize, appointing their respective chairmen. Their functions were limited to receiving from the interested parties the request for a convocation of the commission of inquiry and to giving appropriate notice. The government requesting the convocation is at the same time

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to appoint the persons who are to compose the commission as representatives on its part and the other party on receiving notice is to designate its members. The commission of inquiry is to consist of five members, each party to the dispute appointing two, only one of whom is to be a national of its country. The fifth is to be chosen by common accord by those already appointed save that a citizen of a nation already represented on the commission may not be elected. The governments concerned may refuse to accept the elected member and, if agreement cannot be obtained, the designation is to be made by the President of an American Republic not interested in the dispute who shall be selected by lot by the commissioners already appointed from a list of not more than six American Presidents. The findings of the commission are not to have the force of judicial decisions or arbitral awards. This important convention has been ratified, I am informed, by the United States, Brazil, Chile, Cuba, Honduras, Mexico, Paraguay, Uruguay, Venezuela, Guatemala and Panama. It thus awaits ratification by ten of the American States and it is hoped that the proceedings at the recent Havana Conference and the efforts now being made will result in early ratification. The two permanent commissions have recently been set up, as required by the convention, in Washington and Montevideo.

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At the International Conference of American States held at Havana this year a practical method of attaining the long-sought end of a general arbitration treaty was adopted. It was found to be impossible, as the subject was reached very late in the proceedings of the Conference, to attempt to formulate a convention at Havana, and it was decided to hold a special conference for this purpose at Washington within the coming year. The terms of the resolution are significant. The Conference resolved:

WHEREAS: The American Republics desire to express that they condemn war as an instrument of national policy in their mutual relations; and

WHEREAS: The American Republics have the most fervent desire to contribute in every possible manner to the development of international means for the pacific settlement of conflicts between States;

1. That the American Republics adopt obligatory arbitration as the means which they will employ for the pacific solution of their international differences of a juridical character.

2. That the American Republics will meet in Washington within the period of one year in a conference of conciliation and arbitration to give conventional form to the realization of this principle, with the minimum exceptions which they may consider indispensable to safeguard the independence and sovereignty of the States, as well as matters of a domestic concern, and to the exclusion also of matters involving the

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interest or referring to the action of a State not a party to the convention.

3. That the Governments of the American Republics will send for this end plenipotentiary juriconsults with instructions regarding the maximum and the minimum which they would accept in the extension of obligatory arbitral jurisdiction.

4. That the convention or conventions of conciliation and arbitration which may be concluded should leave open a protocol for progressive arbitration which would permit the development of this beneficial institution up to its maximum.

We are thus on the eve of a most serious effort to determine exactly what we are willing to do in providing for obligatory arbitration.

While these efforts have been made to obtain general treaties, there have been a great number, as I have already indicated, of agreements between two or more Latin American States providing generally for judicial settlement. Such an agreement was made between the Central American governments at the Conferences in 1907 and in 1922-1923. There have been many agreements for the determination of specific questions. The United States has had various agreements with Latin American States relating to particular controversies as well as claims conventions such as the recent special and general claims conventions with Mexico. While one cannot but applaud the deep interest that is taken by the people and govern-

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ments of the American States in plans for general arbitration agreements, it is the special agreements for the determination of particular controversies which have afforded the largest measure of practical achievement. Most of the boundary questions in Latin America have been settled and very few questions remain which give cause for anxiety as being likely to produce actual strife. Unfortunately in some cases, arbitral awards have not yet been carried out.

A serious effort has also been made on the part of American jurists and governments to codify international law. The subject was considered at the Second International Conference of American States in 1901-1902. At the Third Conference a convention was adopted creating a Commission of Jurists to draft codes of international law. The Commission met in 1912, composed of the representatives of sixteen American States. Committees were created to draft different projects. The work was interrupted by the Great War but the Commission of Jurists held a meeting in Rio de Janeiro in 1927 and prepared twelve projects which were submitted to the Sixth International Conference at Havana. Meanwhile, in January, 1924, the Governing Board of the Pan American Union requested the American Institute of International Law to take up the matter of codification and to communicate the results of its work to the

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Commission of Jurists. The members of the American Institute met in Lima in 1924, and prepared thirty projects on matters of public international law relating to the law of peace and deemed to be especially applicable to the American Republics. The results were communicated to the Governing Board of the Pan American Union which resolved to transmit them to the governments of the American States and the projects were presented to the consideration of the Commission of Jurists. Of the twelve projects formulated by that commission, seven relating to status of aliens, treaties, diplomatic agents, consuls, maritime neutrality, asylum, and obligations of States in the event of civil strife, were adopted with certain modifications.

What should be our aims in endeavoring to consolidate the peace of this hemisphere? The first manifestly is that of conciliation, of seeking to aid the parties to a dispute in composing their differences. For this purpose friendly offices are always available. Whether it is advisable to attempt to set up machinery of conciliation, apart from such commissions of inquiry as are already provided for by the Gondra Convention, may be open to doubt. It is not believed that the American States, and I think that I can speak of the Latin American States as holding generally the same views on this point as the United States, are ready to adopt any method of

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compulsory conciliation. The difficulty of arranging for an obligatory scheme of arbitration, even of disputes of a juridical character, shows that there would be no inclination to agree to a general scheme for compulsory composition by other powers of differences of a non-justiciable nature. At the recent Conference in Havana a proposal was made that there should be created "a permanent organization of the Republics of America, independent of the Governing Board of the Pan American Union, which shall constitute a Court of Conciliation and Mediation and which shall have as its principal objects the looking after the maintenance of peace and order in America and to develop political and moral interests between the States, on a basis of cooperation, mutual respect and reciprocal assistance." It was provided that this court should be made up of "five States members of the Pan American Union elected by the International Conferences at each of their periodical meetings. The declarations and suggestions of this court shall not be obligatory or final, but they shall be considered as the reflection of the conscience of America." Its by-laws were to be prepared by the Conference. As these by-laws were not prepared and no plan in detail with respect to the scope of the powers to be entrusted to the court was even drafted by the proposer, there was little afforded as a basis for serious discussion, and in fact the project was not

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discussed at all either in the committees or in the plenary sessions of the Conference. The opinion of the Latin American States on this subject, therefore, has not been formally disclosed, but it may be doubted whether agreement could be reached in the election of any five States which should have definite authority. One of the projects of the Commission of Jurists which was presented to the Sixth Conference proposed that, in case of a serious question which endangered the peace of the American States, the Governing Board of the Pan American Union should at once exercise the functions of a council of conciliation. As the Governing Board of the Pan American Union is composed of the representatives of all the American Republics, this would constitute all the representatives, and not a selected number, a tribunal of conciliation. This proposal was evidently not favored by the Conference for in determining the organization and functions of the Pan American Union it was decided by the Conference that the Union should not "exercise functions of a political character." When this proposal was made, not by the United States, but by Mexico, and it was evident that it had the general support of the delegates, an effort was made by the representative of Uruguay, Dr. Varela, to obtain an amendment which would constitute an exception to the rule when there was unanimous consent of the American Republics. Dr.

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Olaya Herrera, of Colombia, strongly supported this amendment, but Uruguay and Colombia were able to obtain the supporting votes of the representatives of only four other powers, Costa Rica, Cuba, Guatemala and Paraguay. The amendment was thus defeated by a large majority and the proposal denying political powers to the Pan American Union was adopted. But if the American States are unwilling to grant functions of a political character to a union which represents all, it would seem hardly probable that they would be willing to invest a few of their governments with an authority of this sort. The essential condition of success in good offices and mediation is that they should be welcomed by the parties to the dispute. Leaving theoretical considerations, it is apparent that the success of such efforts must depend upon the situation at the time. If good offices are welcomed, there will be no lack of opportunity to profit by them, and, if they are unwelcome, efforts to conciliate in the manner suggested would very likely be fruitless. Where diplomatic efforts have failed, and friendly offices are not desired or cannot succeed, the most practical method of obtaining suitable adjustment, in the absence of an agreement for arbitration applicable to the particular dispute, is a prompt, thorough and impartial inquiry into the facts. For this the Gondra Convention provides and the commission of inquiry under it may be demanded

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“by any one of the governments directly interested in the investigation of the facts giving rise to the controversy.” It is difficult to see why any American State that professes a desire to obtain pacific settlement of disputes should refuse ratification of this convention.

The next step is to obtain a general agreement for obligatory arbitration to the utmost extent possible. How far will the American States be willing to go in this direction? The report that was made to the Havana Conference on this subject made the exception of controversies “which involve constitutional provisions in force in one or the other State party to the controversy” and those “which may place in jeopardy the independence of a State” with the addition that in the latter case, and for such State, arbitration shall be voluntary, but that it shall be obligatory for the other State. It was also proposed that the question whether a controversy was included in the exceptions stated should be submitted to arbitration; and that the following questions should, in all circumstances, be submitted to arbitration, that is, differences relating to the interpretation or application of public treaties or to the interpretation or application of a principle of international law. The resolution for the arbitration conference about to be held refers to the “minimum exceptions” which may be considered “indispensable to safeguard the indepen-

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dence and sovereignty of the States" and the exclusion of "matters of a domestic concern" and of "matters involving the interest or referring to the action of a State not a party to the convention."

The Hay treaties of 1904 and the Root treaties of 1908 were limited to differences "of a legal nature or relating to the interpretation of treaties" and even with this limitation there was the proviso that the differences were not such as to affect "the vital interests, the independence or the honor of the two contracting States" or "concern the interests of third parties." The difficulties in defining the scope of obligatory arbitration are great, but it is not believed that they are insuperable if there is a frank recognition of the sort of questions the parties have in mind when they speak of "independence and sovereignty" and "domestic questions." It is manifest that the exception of cases involving "constitutional provisions" or those which affect "vital interests" or "honor" are so indefinite that a plan for an agreement for obligatory arbitration with such exceptions would have little value. For a general agreement of arbitration is not needed with respect to disputes that nations would be entirely willing to submit to arbitration after the disputes have arisen, but for those disputes which, in the absence of a general agreement, they would be indisposed to arbitrate. That is the inescapable test of our general schemes.

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Again, one State may object to the internal legislation of another State in a matter entirely within its province. We have questions in all our countries which, we think, are within our competency because they relate to the administration of our laws within our borders. And yet such questions may arise which project themselves into the international sphere. Thus, there may be denials of justice and confiscations of property on the pretext of national authority. The State through its domestic legislation may commit a breach of international obligation. The other cases which are properly described as domestic are those where there is no breach of international law, but there is a grievance because of the way in which a State establishes its tariffs, its commercial regulations, its rules as to immigration. These difficult questions must remain the subject of friendly negotiation. It is not to be expected that a State will yield its sovereignty or its right independently to exercise its governmental functions where there is no breach of a treaty or disregard of rights under international law. The aim should be to define exceptions as clearly as possible and otherwise in cases outside the exceptions to make the resort to arbitration compulsory. It would seem also, from the review of past efforts, that it is easier to agree upon conventions relating to pecuniary claims than upon obligatory arbitration in other cases, that is, claims for

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pecuniary loss or damage which cannot be amicably adjusted, the decision to be rendered in accordance with the principles of international law. We should be able to have a general claims convention of this sort ratified by all the American States.

Apart from general arbitration agreements, or general agreements for commissions of inquiry such as the Gondra Convention, there is an important opportunity to promote good relations between particular States by the establishment of permanent joint commissions of the sort that we now have with Canada. This machinery is especially helpful in aiding in the disposition of controversies between States that adjoin each other and whose relations are very intimate for that reason. For example what we have done with Canada, it ought to be possible to do with Mexico. It is not necessary that questions of fact should embarrass relations between States which have every reason to be friendly. They may be unwilling to submit particular questions to arbitration, but it ought to be possible to ascertain the facts and sometimes it is easier to do this through a permanent joint commission with equal representation of both countries than through new commissions of inquiry set up after the controversy has arisen. The reference may be automatic, in the natural course of events, before a controversy assumes a serious aspect.

I have often pointed out the main difficulty which

lies in perfecting plans for obligatory arbitration. It is not that there is an absence of a desire to have an amicable and entirely fair settlement, but that arbitration comes to the practical test of the men who are to be arbitrators. It is not a divine institution. It calls for a third or fifth arbitrator, or an umpire, who will make the actual decision. How is he to be chosen? Of course, by agreement. But suppose the parties cannot agree, and this is not infrequently the case. The Hague Convention provides that in such a case the choice of the umpire is to be entrusted to a third power, but what State is to be the third power? This is to be determined "by common accord." If there is no such accord, then each party is to select a power and these two powers are to select the umpire. If these powers cannot come to an agreement, then each of them presents two candidates taken from the panel of the Permanent Court, exclusive of the members selected by the parties and not being nationals of either of them, and the umpire is to be chosen by drawing lots. Thus the selection of the man who most probably will actually decide the controversy may be determined by two "third powers" or by chance. The third powers in making their selection act through their political administration. It has seemed to me that possibly a better method of selecting the umpire, in order to secure so far as possible an impartial and highly qualified person

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who would not be influenced by political considerations, would be to provide for the selection of the umpire by outstanding jurists who would be agreed upon in advance, who would know the quality of the men available and who would make the selection with a sense of responsibility in view of their reputation and juridical standing in order that a justiciable dispute might be appropriately determined.

PROSPECTS OF INTERNATIONAL ORGANIZATION

SHOULD there be an American league of nations? Such a league was in substance proposed at the Santiago Conference of 1923. But the proposal has not been viewed with favor. The determination of the Havana Conference that the Pan American Union should not exercise political functions would seem to indicate strong opposition. Those who are fascinated by analogies, so often a pitfall rather than a light, appear to give insufficient attention to the differences between our situation and that of Europe. Among the American States there is not a group of recognized great powers which would form a basis for such a compromise as made possible the establishment of the League of Nations with its Council and its Assembly. The idea of the equality of States is with us most tenaciously held and the experiences of the Latin American Republics have not led them to favor the establishment of any spe-

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cially privileged American group which could exert a powerful, if not controlling, influence in the sphere of American relations.

What are the objects of international organization? Broadly stated, they are (1) conference; (2) conciliation; (3) judicial settlement of controversies. The conference is for legislative functions. Conciliation is to promote amicable settlement of controversies, especially those that cannot be determined by the interpretation of treaties and the application of principles of international law. Judicial settlement is to determine disputes where legal principles may be applied. With the American States we have our periodical conferences, which occur apparently as often as we can use this method with any reasonable prospect of success. This is our legislative instrumentality. We have the Pan American Union as the administrative organ of the Conference. It has been denied political functions, but as an executive instrumentality, as the organizer of special conferences held under resolutions of the general conferences, as the repository and disseminator of information and the developer of influential contacts and cooperation, it is highly successful. It has a most efficient director in Dr. Leo S. Rowe and the activities of a varied character assigned to it by the recent international conference show the appreciation of the success of its work and the desire to make it as

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useful as possible. The effort to create a political organization of the American States could not succeed unless exigencies should exist, as they did exist abroad, which seemed to demand such a special organization. At present the tide of nationalism in this hemisphere is running high, submerging all interfering plans. There is no willingness to have any organization which will give any American State or any number of American States an opportunity to put pressure on other American States. The American Republics desire to retain their right to do their negotiating as they please and to reach their agreements without pressure. In this situation, those who are devoted to the peace of the Western Hemisphere, and to the settlement of controversies, must use the means at their command, losing no opportunity to show their respect for the integrity of their neighbors, their loyalty to the ideal of the independent sovereignty of each of the American States, their desire to help in the solution of difficult problems, and above all the observance on their own part of the rules of conduct which appropriately go with self-respect and a spirit of neighborliness.

Should there be an American court of international justice? Proposals for the establishment of such a court have been made. One was submitted to the Fifth Pan American Conference at Santiago. Another was formulated by the American Institute

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of International Law. Both of these were submitted to the Commission of Jurists at Rio de Janeiro, but neither was recommended. At the recent Conference another project for such a court was presented by the delegation of Colombia. The difficulties in establishing an American international court lie, first, in the agreement as to the controversies which should be submitted to it, a question similar to that already considered in connection with plans for obligatory arbitration, and, second, in the selection of the judges. The desire for a permanent court of international justice has frequently been voiced by our Government. The reasons for having a permanent court as distinguished from an arbitral court, set up after the controversy has arisen, are sound enough. The arbitral processes lend themselves more readily to the intrusion of political interests and to solutions by way of compromise. Secretary Hay instructed the delegates to the First Hague Conference to present a plan for an international tribunal of a permanent character and Secretary Root instructed the delegates to the Second Hague Conference to bring about "a development of The Hague Tribunal into a permanent tribunal composed of judges who are judicial officers and nothing else, who are paid adequate salaries, who have no other occupation, and who will devote their entire time to the trial and decision of international causes by judicial methods and under

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a sense of judicial responsibility." The establishment of a permanent court of international justice has thus been a cardinal feature of American policy. But the plans were wrecked because of the inability to make a satisfactory arrangement for the selection of judges. You could not well have a permanent court consisting of representatives of all the nations in the world, and how was the choice to be made? The organization of the League of Nations with its Council and Assembly made possible the solution of this difficulty, as was suggested by Mr. Root acting as one of the advisory jurists for the establishment of the court in 1920. By this plan the Council in which the great powers, members of the League, are represented, and the Assembly, in which all the powers, members of the League, are represented, are electoral bodies and through provision for their concurrent action a satisfactory basis has been found, so that the great powers act as a check upon the small powers and the small powers act as a check upon the great powers. We have no such organization available in this hemisphere and it is not likely that one could be set up.

Further, it may be doubted whether we need a permanent court of international justice for the States in this hemisphere. The protocol of the Permanent Court of International Justice, now sitting at The Hague, was signed not only by Canada,

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but by fourteen Latin American Republics. Eight of these have signed the optional clause for compulsory jurisdiction of the Permanent Court. Again, if we found it impossible to have a permanent American court of international justice with a selected number of judges, few in number, the alternative would seem to be that we should establish a panel of jurists from which a court could be set up. But if we were to adopt this method, it would be difficult to see why the old Hague organization is not adequate to our purpose. Much can be said in support of the general idea of the organization of an American court, but the practical considerations do not favor its establishment.

There can be no doubt that there are Pan American interests and that there is a Pan American sentiment which demands the special cooperation of the American States. Those who deride it find fault with the small measure of achievement. Unless they are able to see solidarity effected by political union, they are disposed to minimize the advantages of such cooperation as is possible. At the recent Pan American Conference it was recognized, in the adoption of the preamble to the convention for the Pan American Union, that there was a "moral union" of the American Republics and it was stated in the first article of the convention that "the Union of the American States tends to the fulfilment of its object

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through the following organizations: (a) the International Conference of American States; (b) the Pan American Union under the direction of a Governing Board with its seat in the City of Washington; (c) every organ that may be established by virtue of conventions between the American States." We are joined together in an inescapable and constantly increasing intimacy. We can help each other or by an unnecessary aloofness we can make progress difficult. There is no sacrifice of independence in cooperation, nor is there any promise of beneficial cooperation in trying to press it beyond the appreciation of the need or the advantage of it. Loose associations which do not attempt to sacrifice independent positions tenaciously maintained afford the greatest opportunity for the slow but effective work of the processes of reason, for the growth of the friendship which in itself prompts cooperative endeavors. Our contacts in conferences, both general and special, aid a multitude of undertakings which are none the less beneficent because they are not spectacular. Experts of all sorts, journalists, geographers, bibliographers, economists, publicists, students of public health, of immigration, of communications, are meeting in an unending series of special conferences. Pan Americanism rests on the solid fact of our neighborhood and intercourse. It is not simply for our generation, but for all time. While we are learn-

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ing of the civilizations in this continent of the remote past, we know that in our existing political establishments we have all the vigor, the promise and the dangers of youth. Great areas remain to be populated, vast natural resources are yet to be developed, and in a true sense the civilization of the Western Hemisphere is just beginning. It is in the spirit of Pan Americanism, in its desire for understanding and comradeship, in its aim to promote accord, in its wise use of the means available to these ends, in its abundant confidence that no mere barrier of race or language can stand in the way of unity of spirit and purpose, that we find in large measure the hope for the future of the American nations.

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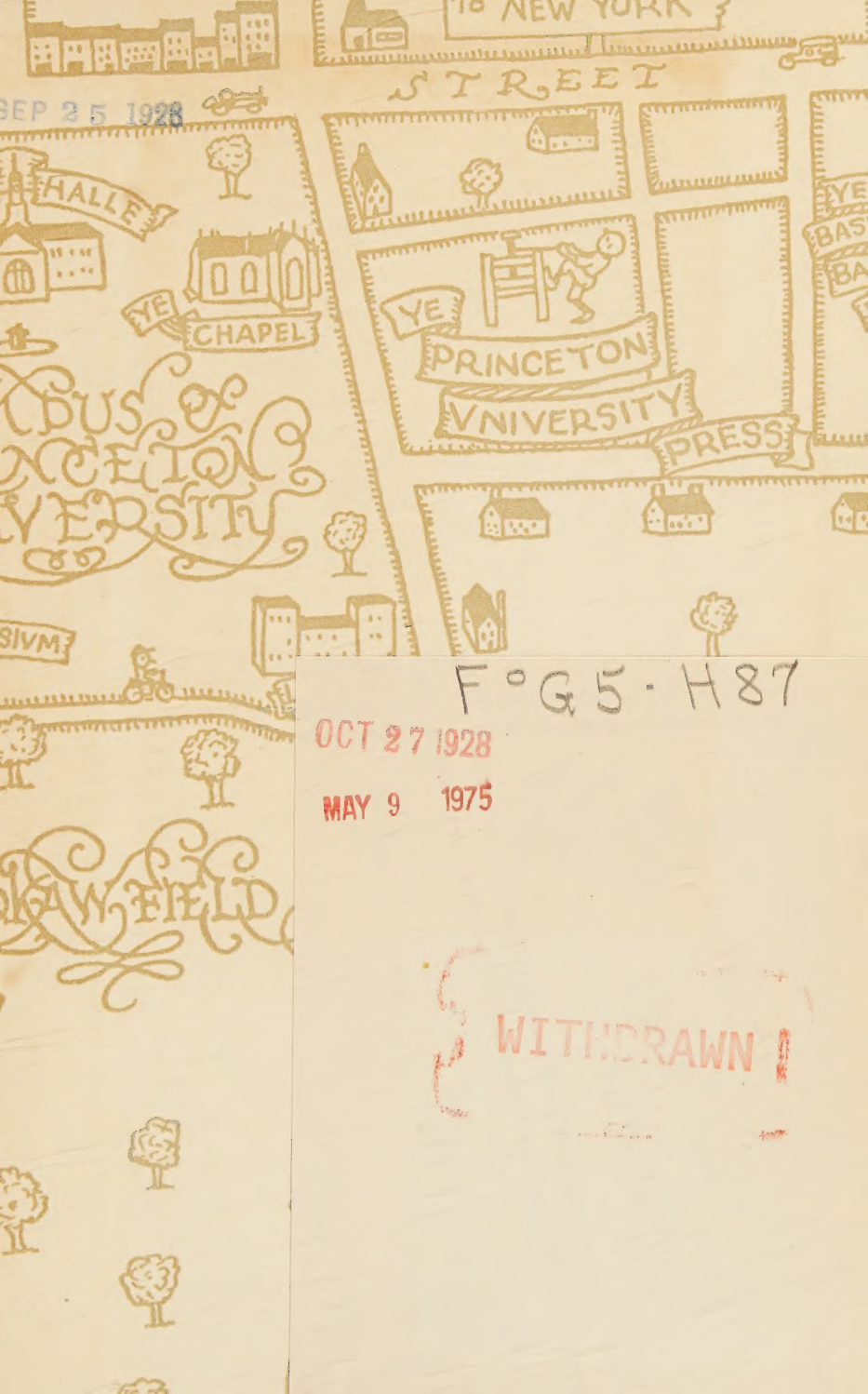
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